

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Case No. 16-CR-16
) Milwaukee, Wisconsin
)
 vs.) April 22, 2019
)
 ORLANDO MEDINA,) 1:51 p.m.
)
 Defendant.)
)

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE PAMELA PEPPER
UNITED STATES DISTRICT JUDGE

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UNITED STATES OF AMERICA:

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TRANSCRIPT OF PROCEEDINGS

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THE CLERK: The Court calls criminal case 15-CR-16, United States versus Orlando Medina. Please state your appearances for the record starting with counsel for the Government.

MG. GONZALES: Assistant United States Attorney Mario Gonzales appears on behalf of the Government. Also seated at counsel's table, HIDTA Task Force Agent Evelyn Lazo.

THE COURT: Good afternoon.

MR. BIRDSALL: Attorney John Birdsall on behalf of Mr. Pagan, who appears in person. Good afternoon.

PROBATION AGENT: Good afternoon, Your Honor. Jennifer Morgan from probation.

INTERPRETER: Good afternoon. Federal Interpreter Alexandra Wirth.

THE COURT: Good afternoon.

(Whereupon the interpreter was sworn in.)

INTERPRETER: Your Honor, so I can indicate so the Court doesn't ask me questions, that he prefers me to be standby interpreter, and I will assist him in all his needs.

THE COURT: Thank you, Ms. Wirth. I would note for the record as some of us recall that awhile back at the

1 beginning of this case, Mr. Birdsall had a number of documents
2 that he needed assistance in having translated. Ms. Wirth
3 helped him with that. When we went to try to find an
4 interpreter for today's hearing, we discovered that interpreters
5 are busy people, and they are all booked up. And we reached out
6 to Ms. Wirth, and I think she reminded us of the fact that she
7 had worked directly for Mr. Pagan and Mr. Birdsall, and asked if
8 there would be any problem with that or if that were a conflict.
9 We contacted Mr. Gonzales. My understanding is Mr. Gonzales
10 said he did not have a problem with Ms. Wirth acting as the
11 interpreter today. Is that right, Mr. Gonzales?

12 MG. GONZALES: That is correct. I've worked on other
13 cases with Ms. Wirth, and I know that she is an equal
14 opportunity interpreter. She points out negatives for the
15 Government as well as for the defense, so I feel confident in
16 her handling any hearing that I'm involved in.

17 THE COURT: Thank you. That's my feeling as well. So
18 thank you for helping us out, Ms. Wirth.

19 All right. We're here today for Mr. Pagan's
20 sentencing after what I imagine seems to Mr. Pagan to be a
21 virtual lifetime. I have several documents on the docket.
22 First, I have the Presentence Report, which was filed on the
23 15th of April. That's Docket No. 110. That's the revised one.
24 I also have an addendum to that report, which contains Mr.
25 Birdsall's objection. A separate objection is also docketed in

1 the docket, but I'm just going to be referring to the addendum
2 because that has all of the information in it, including
3 probation's response and the Government's response. That's at
4 Docket No. 111.

5 And in addition, Mr. Birdsall has filed a Sentencing
6 Memo, Docket No. 113, which also contains some separate
7 arguments from those he made in the objections. Mr. Gonzales,
8 any other documents that you're aware of that I should have
9 mentioned?

10 MG. GONZALES: No, Your Honor.

11 THE COURT: Ms. Morgan, do you know of any others that
12 probation received that I didn't mention?

13 PROBATION AGENT: No, Your Honor.

14 THE COURT: All right. And Mr. Birdsall, I've covered
15 everything?

16 MR. BIRDSALL: Yes, Judge.

17 THE COURT: Then Mr. Gonzales, can the Government
18 think of any reason why we should not proceed to sentencing
19 today?

20 MG. GONZALES: No, Your Honor.

21 THE COURT: Mr. Birdsall, any reason from the defense?

22 MR. BIRDSALL: No, Judge.

23 THE COURT: All right. Mr. Pagan, let me tell you how
24 we're going to proceed this afternoon. The first thing we're
25 going to do is that there's a legal issue that Mr. Birdsall has

1 raised about what the mandatory minimum sentence should be. And
2 I'm going to talk with the lawyers about that. I'm going to
3 have to make a decision in that regard.

4 Then, I'm also going to talk with the lawyers. They
5 disagree with each other about what the sentencing guidelines
6 ought to be, so I'm going to talk with them about those
7 disagreements and work those out. And once I figure out what
8 the mandatory minimum sentence is and what the sentencing
9 guidelines are, I then need to hear from the attorneys about
10 what they think the right sentence should be because I don't
11 have to follow the guidelines, as I think Mr. Birdsall's
12 probably told you.

13 So I'm going to start with Mr. Gonzales because the
14 Government brings the charges. I'm going to hear what he has to
15 tell me about what he thinks the sentence should be. Then, I'm
16 going to turn to Mr. Birdsall. He's already told me in writing
17 what he thinks it should be, but he's going to have some more
18 arguments for me, I'm sure. And then after that, I'm going to
19 turn to you. I've been telling you for two years now that you
20 will get an opportunity to talk to me in the right circumstance.
21 Today's the right circumstance. Today is the day that you can
22 tell me whatever it is you've been wanting to tell me for all
23 this time about the sentencing, about the case, about the
24 investigation, whatever it is. You can talk as much as you want
25 to today after Mr. Birdsall gets finished. Once you finish,

1 I'll make a decision about the sentence, okay?

2 All right. Mr. Gonzales, Mr. Birdsall, I'm going to
3 start with the argument that Mr. Birdsall made in his Sentencing
4 Memorandum with regard to the applicable mandatory minimum
5 sentence. And just for the record, I want to go back and -- and
6 recount a little bit of how we got here.

7 After the Government returned the Indictment back in
8 2015, in fact, I guess an extensive time after the Government
9 returned the Indictment, I think probably sometime around the
10 time Mr. Pagan decided to go to trial in January of 2018, the
11 Government filed an 851 notice indicating that it intended to
12 rely on one of Mr. Pagan's prior convictions to seek an enhanced
13 mandatory minimum.

14 The Indictment charges Mr. Pagan with possessing in
15 excess of 500 grams of cocaine. And under the relevant statute,
16 841(b)(1)(B), that amount triggers a five year mandatory
17 minimum. However, if the defendant has a prior conviction for a
18 serious felony drug charge or violent felony, then if the
19 Government files the appropriate notice, a mandatory minimum
20 goes up to ten years, and the statutory maximum goes up to life.

21 So on January 5, 2018, the Government filed this
22 notice, which is the required notice, indicating that it planned
23 to rely on a prior conviction to increase the mandatory minimum.
24 The prior conviction that the Government listed in that notice
25 was a 2002 conviction that Mr. Pagan got in Milwaukee County

1 Circuit Court. And that conviction was for a violation of what
2 was then numbered Wisconsin Statute 161.16(2)(b)(1) and
3 161.41(1m)(cm)(1). The numbers have changed only in the sense
4 that the statutes are now numbered 961 instead of -- I mean 941
5 -- Yeah, sorry, 961 instead of 161.

6 But the relevant count or the relevant charge was the
7 violation of 961.41(1m)(cm)(1). That statute prohibits -- and I
8 have the text of it in front of me. That statute prohibits
9 anybody from possessing with intent to manufacture, distribute
10 or deliver certain controlled substances, in particular the (cm)
11 includes cocaine or cocaine base. And subsections (1m)(cm)(1)
12 is five grams or less. So that was a conviction for possessing
13 with intent to deliver or distribute or whatever cocaine.

14 Mr. Birdsall argues in his sentencing memo that that
15 conviction does not qualify as a predicate conviction to enhance
16 the mandatory minimum penalty because that statute is broader
17 than or captures more behavior than its federal cohort. And
18 under the categorical approach that the Supreme Court has laid
19 out in *Taylor v. United States*, if the state statute would
20 capture a larger body of behavior than the federal statute, the
21 state statute cannot be used as a predicate offense.

22 To walk through Mr. Birdsall's argument, he's not
23 arguing necessarily that the state offense of possession with
24 intent to distribute cocaine under 961.41 is broader than
25 possession with intent to distribute cocaine under our Federal

1 Statute 21 U.S.C. § 841(a)(1). What he's arguing is that
2 Section 961.41 of the state code prohibits possession of
3 controlled substances. And the definition of controlled
4 substances includes Schedule I controlled substances, Schedule
5 II controlled substances or controlled substances analogs.

6 The federal statute doesn't specifically mention
7 controlled substance analogs; although, there is a federal
8 controlled substances analog statute. What Mr. Birdsall argues
9 is that in state court, a controlled substance analog is any
10 substance that kind of mimics the effects of a controlled
11 substance.

12 In federal court, he says, a controlled substance
13 analog is any substance that mimics the effect of a controlled
14 substance and that is not intended for human consumption. So he
15 says that those two definitions are different. And because
16 those two definitions are different, the federal statute is more
17 narrow because it limits analogs to not intended for human
18 consumption. State statutes's broader because it discusses any
19 controlled substance analog; therefore, this conviction can't be
20 a predicate offense for bumping up mandatory minimum.

21 So Mr. Gonzales, I guess I'll turn to you first.

22 MG. GONZALES: Well, Judge, the Government takes the
23 position that the distinction is when one looks at the basis for
24 the recidivism statutes in the federal statutes, it's to punish
25 repeat offenders. It's not to parse -- and I know what *Elder*

1 indicates as far as the -- the type of offenses that we're
2 looking at. But looking at it in the big picture, the 851
3 statute is to punish for repeat offenders. So we have
4 Mr. Medina continuing his recidivist habits of continuing to
5 deal in controlled substances.

6 Now, let's take a look at the individual statute. The
7 federal statutes cover the controlled substances as defined by
8 the schedules. It also covers counterfeit or fake substances
9 that are included under the statute. If something mimics a
10 controlled substance that's not technically a controlled
11 substance or doesn't meet the full definition of a controlled
12 substance, it's also covered under the federal statute for --
13 because it is -- you're selling it or distributing it under a
14 counterfeit definition or a counterfeit label, such that I
15 believe that the cocaine he was involved in. And the Court has
16 the factual basis for the underlying offense that the Government
17 is relying on. The fact that it was cocaine, the fact that it
18 wasn't an analog, it wasn't any of these -- these -- It didn't
19 deviate from what the statute is designed to address. So based
20 upon the fact -- the underlying facts of this case, the fact
21 that the federal statutes also cover counterfeit substances
22 under the Controlled Substance Act, I think that it covers the
23 basis for an enhancement under 851.

24 THE COURT: Okay. Before I turn to Mr. Birdsall, let
25 me just tell you where I am and give Mr. Birdsall an opportunity

1 to address what my concerns are.

2 21 U.S.C. § 802(6) defines the term controlled
3 substances for federal criminal activity. That section says,
4 "The term controlled substances means a drug or other substance
5 or immediate precursor included in Schedule I, II, III, VI or V
6 part B of this subchapter."

7 And then 841(a)(1) prohibits any person to knowingly
8 or intentionally manufacture, distribute, dispense a controlled
9 substance. If we look at Section 21 U.S.C. § 813(a), you'll
10 find the definition of a controlled substance analog. "A
11 controlled substance analog shall, to the extent intended for
12 human consumption, be treated, for the purposes of any federal
13 law as a controlled substance in Schedule I."

14 So first of all, I think contrary to Mr. Birdsall's
15 representation that the federal statute doesn't reference
16 analogs, it does. It actually defines an analog as a Schedule I
17 Controlled Substance to the extent that it's intended for human
18 consumption.

19 That leads us to Mr. Birdsall's more specific
20 argument. Mr. Birdsall's specific argument is that the state
21 statute doesn't have that intended for specific consumption
22 piece to it, and that gets me to my question specifically for
23 Mr. Birdsall. I think the state statute does have that
24 component, unless I'm missing something. If you look at
25 Section 961.04(4m)(b)4. 961.01(4m)(a) defines controlled

1 substance analog. The definition is very similar to the federal
2 one. And then (b) defines what a controlled substance analog
3 isn't. So a controlled substance isn't an analog. A substance
4 for which there's an approved new drug application through the
5 FDA is not an analog. A substance that someone's got an
6 exemption for for investigating is not an analog. Then, you
7 come to number four, "Any substance to the extent not intended
8 for human consumption before an exemption takes effect with
9 respect to the substance."

10 So it looks to me like the state statute excludes
11 substances that aren't intended for human consumption just like
12 the federal statute does. So I guess my question for you,
13 Mr. Birdsall, is what am I not seeing?

14 MR. BIRDSALL: I see your point, and I honestly did
15 not see that. What was it, 961.04?

16 THE COURT: It's 961.01 (4m) as in Michael, (b)4.

17 MR. BIRDSALL: I guess I was -- When I was analyzing
18 this, it wasn't -- When I think about the categorical approach
19 and the elemental breakdown that the court envisioned in *Elder*
20 and I suppose in *Taylor* too didn't include cross referencing
21 from other statutes. It was more of a literal, you know, it's
22 sort of like a *Blockburger* thing where it's an element, element,
23 element, and it would take the plain language of the statute.

24 And so that was really where I was coming from, and so
25 I -- I don't know -- I understand it's sort of like the state

1 does it the reverse way that the federal statute says it. It
2 includes the human consumption aspect of it. But I guess -- I
3 guess my view of -- of the way that we need to apply the *Elder*
4 test was to take the actual statutory language and statutory
5 structure of -- of the charged statute for the prior conviction
6 and the current one, and that was it. And all of the associated
7 cross referencing wouldn't come into play there. Because it
8 seems to me that when appellate courts try and fashion tests
9 like this, they're looking to do it, in a sense, in a way that's
10 going to be as clear as possible for both the litigants and
11 trial courts to apply it.

12 It seems to me that if *Elder* is going to be a useful
13 -- usefully applied by all of us in the trial courts, that --
14 that it has to mean that it's just the plain language there of
15 the -- of the old statute and the new statute, whatever is in
16 play there. So I guess that's my position.

17 THE COURT: So I, obviously, don't want to necessarily
18 engage in argument with you, Mr. Birdsall. But first of all,
19 *Elder* doesn't say that. I don't think *Taylor* does either.

20 But more to the point, the state law prohibits
21 somebody from possessing or manufacturing or distributing
22 controlled substances or controlled substance analog.

23 The federal law prohibits somebody from possessing or
24 manufacturing or distributing controlled substances. And the
25 definition of controlled substances includes controlled

1 substance analog.

2 The definition of a controlled substance analog under
3 state court requires human consumption under the section that I
4 just gave you. And the definition under the federal law
5 requires human consumption. So you sort of said you don't need
6 to look at all the other cross references. I don't know how you
7 figure out whether anybody violated either one of those statutes
8 unless you look at those cross references.

9 And my understanding of the categorical approach has
10 been, as I kind of put it broadly at the beginning, if the
11 predicate offense covers more conduct than the offense it would
12 trigger, it can't be a predicate offense. My understanding is
13 that you are arguing that the state law covered more conduct
14 because it covered anything that humans would ingest and
15 anything that humans wouldn't, but it doesn't. So I don't see
16 how the state law would -- I'm trying to imagine a circumstance
17 where the state law would capture behavior that the federal law
18 doesn't.

19 And I actually tried before coming out. I thought
20 about it for a while to try to imagine what would be a
21 circumstance that somebody could be convicted under the
22 definition of analog in state court and that wouldn't result in
23 a conviction in federal court, and I couldn't think of one.
24 That doesn't mean there isn't one. I couldn't think of one. So
25 unless you can think of one --

1 MR. BIRDSALL: I haven't engaged in that exercise, but
2 what I've heard you say and I too am not trying to be
3 argumentative, was that one can get convicted under the state
4 law and in that conviction mutually they're going to use the
5 cross references and whatnot in the application of the law in
6 that prosecution. But I sincerely think that just like we're
7 having this conversation at all right now is that the appellate
8 courts look to avoid that sort of mind field if you will of
9 additional almost potentially endless analysis from the federal
10 and the state side in applying this proposition of what
11 constitutes a predicate offense.

12 And so that's why I just came at it from the, you
13 know, strictly the literal sort of this is what the statute says
14 and compared them because it seemed to me that's what they were
15 directing us to do.

16 THE COURT: Okay. And so that we don't go back and
17 forth and argue anymore, I'm going to make my decision, but I
18 will assert I don't think that's exactly what you did. Because
19 you looked at the state statute of conviction and then you went
20 further and you looked at the definitional section to find out
21 how the state defined analog. That's all I did with the federal
22 statute. I came to the same conclusion. So I appreciate the
23 argument, but I believe that the 2002 Wisconsin conviction is a
24 valid predicate for triggering the enhanced sentence under
25 841(b) (1) (B) .

1 And, of course, you're free to challenge that on
2 appeal. And the Seventh Circuit may tell me that you're right
3 and I'm wrong. But until then, I believe that the appropriate
4 mandatory minimum sentence is the ten year mandatory minimum,
5 the 120 month mandatory minimum because of the valid 851 notice
6 and prior conviction.

7 The second issue that -- that Mr. Birdsall raised has
8 to do with whether or not, and this is a guidelines issue,
9 whether or not Mr. Pagan qualifies as a career offender. This
10 is also a predicate conviction issue, but I just -- I want to
11 walk through briefly.

12 The Presentence Investigation Report suggested that
13 the base offense level for Mr. Pagan's offense should be 28.
14 And the way that the presentence writer came to that conclusion
15 was by taking the amount that was actually intercepted by the
16 postal service, which was a little over 1.6 kilos, and then
17 taking a conservative estimate of what Mr. Duenas testified. He
18 said he got five to seven additional packages each with anywhere
19 between a half key to a key. And the presentence writer made a
20 conservative estimate, five packages, half kilo each,
21 two-and-a-half additional kilos and came to the conclusion that
22 the amount attributable to Mr. Pagan was between
23 three-and-a-half and five kilograms, and that resulted in an
24 offense level of 28. However, the presentence writer indicated
25 that because Mr. Pagan qualifies as a career offender, the

1 offense level jumped up to 37 given again this assumption that
2 his minimum was ten, maximum was life.

3 So the reason I'm taking the career offender question
4 next is because if Mr. Pagan is a career offender, then the
5 issue of how we calculate the amount of drugs relevant to
6 Mr. Pagan kind of becomes a non-issue because that's not the
7 basis for the offense level.

8 With regard to that argument, the presentence writer
9 indicated that Mr. Pagan had two prior felony drug convictions.
10 The first one is the one we just talked about, the 2002
11 Wisconsin conviction, and I've just given you my ruling on that,
12 whether or not that constitutes a qualifying predicate offense.

13 The second possibility was a 2009 drug conviction from
14 Puerto Rico. The presentence writer did not consider that to be
15 a predicate offense because the conviction was under Section 406
16 of the Controlled Substances Act in Puerto Rico.

17 That's the conspiracy, attempted conspiracy portion of
18 the statute, and the underlying substantive offense was a
19 violation of Section 404, which is the portion of the statute
20 that prohibits possession but not with intent to distribute. So
21 that didn't qualify as the quote, unquote serious felony offense
22 that's required under the guideline.

23 The second conviction, according to the presentence
24 writer, is the 2011 conviction in Puerto Rico. It appears and I
25 don't have the underlying paperwork, but it appears that

1 Mr. Pagan was charged in a consolidated case, one case charged,
2 with violating Article 401, which is or can be at least
3 possession with intent to distribute or to deliver. And the
4 second one charged him with Article 406, which is conspiracy.

5 The eventual plea was to 406, and that's what the
6 sentencing was on, 406. And Mr. Pagan got, I think, a suspended
7 sentence or an imposed and stayed sentence of four years.

8 Mr. Birdsall argues then that the Commonwealth statute
9 was broader and captures more behavior than the federal statute
10 because under Article 401, it is illegal to manufacture,
11 distribute, sell, transport or conceal controlled substances.
12 The federal statute does not discuss concealment.

13 And so Mr. Birdsall argues again that because you can
14 violate the Commonwealth statute by concealing drugs and that
15 wouldn't be a violation of the federal statute, the 2011
16 conviction under 406 doesn't count -- I'm sorry -- or doesn't
17 qualify as a predicate offense for being a career offender under
18 4B1.1. So Mr. Gonzales.

19 MG. GONZALES: Yes, Judge. I think that
20 Mr. Birdsall's claim, if I'm understanding it correct, is that
21 by including the language transport and conceal in the statute,
22 it's broader than the federal statute, which doesn't have that
23 language but does have the language of import or export. And as
24 the Government in its response to the probation department
25 indicated that the transport and to export covers the someone

1 who -- someone knowingly possesses an item, they would -- they
2 would and out of inevitably if they were -- if they put the --
3 the item into motion, I would say, whether it's transporting it,
4 and more than likely if they were transporting it, they were
5 also concealing it because they wouldn't leave it out in the
6 open. But that the federal statute which covers the
7 import/export, the Government would argue, is similar enough
8 conduct with the other possession and other descriptors under
9 the federal statute to encompass the -- I can't imagine a
10 scenario in which somebody would transport drugs that weren't
11 covered under the federal statute. People do that all the time.
12 They put cars, drugs, concealed them in traps and transport them
13 from point A to point B. That's covered such that I think that
14 there's nothing unique about the federal -- about the Puerto
15 Rican statute that couldn't be covered by the federal statute,
16 so I guess that's the Government's position.

17 THE COURT: Mr. Gonzales, if I could, could I ask you
18 to address, and my view I don't think transport's the issue. I
19 agree with you. I think import/export -- import and export is
20 just kind of a narrowing of transport that's, you know, moving
21 from point A to point B. I agree with you. What I'm wondering
22 if you wouldn't address though because it has come up is
23 conceal. I mean, I actually can't imagine that someone conceals
24 drugs without transporting them. I mean, you know, there --

25 MG. GONZALES: I guess my response to that would be

1 that you can't conceal something without possessing it for
2 purposes of the concealment. So if you have the ability to
3 exercise control over an item and you cover it up or do
4 something to prohibit others from finding it, I'm guessing
5 you're exercising some control over that item.

6 As far as conceal goes, I think that it is -- Again
7 the whole -- When people are involved in drug trafficking, the
8 purpose behind their efforts is to avoid detection.

9 THE COURT: Right. But I'm sorry to interrupt you,
10 Mr. Gonzales, but we all know that this categorical approach
11 then is a whole different ball game. It doesn't look at sort of
12 the broad general purposes of the statute and say, well, as long
13 as this one kind of intended the same thing as this one does. I
14 mean, I'll be frank with you, the First Circuit -- Seventh
15 Circuit, obviously, has not dealt with this statute because --
16 Puerto Rican statutes I don't think comes up much here. But the
17 First Circuit has, and there is a decision from 2011, *Carlos*
18 *Davila-Felix. United States v. Carlos Davila-Felix*, and it is
19 at 667 F.3d 47. And the First Circuit actually found that
20 because conceal appears in Article 401, Article 401 is broader
21 than 841(a)(1) and can't act as a predicate offense because of
22 the word conceal because it may have found that conceal was
23 broader.

24 Now, there's another case that's very recent, on
25 January 24th of 2019. *Jose Martinez-Benetiz, United States v.*

1 *Jose Martinez-Benetiz*, 914 F.3d 1, just this year in January, in
2 which the Government asked the First Circuit to kind of rethink
3 that decision. And because there were some other issues in the
4 case that kind of decided, the First Circuit said, we don't need
5 to get to that, and so it didn't address the question of
6 reconsideration. So as we sit here right now, the First Circuit
7 has found that 401 is -- cannot be a predicate offense for the
8 career offender.

9 MG. GONZALES: Well, Judge, to be completely honest, I
10 know that I've gotten a recent memorandum from the appellate
11 section regarding *Elder*, and -- that advising us that in cases
12 like this in regards to precedent and other circuits, that more
13 than likely we're going to lose. So what the Court is telling
14 me is not something that I'm -- I'm -- I ultimately think that
15 probably -- not probably. I trust the Court's analysis on these
16 issues. And looking at this, I believe that I think that the
17 Court's analysis is probably correct in applying the circuit
18 application such that this law is continually changing, and
19 we're getting directives. But I think that it will impact the
20 -- I think that this is a much closer issue. And that based
21 upon that, I don't have any objection in the event that the
22 Court makes the finding that he is not a career offender and
23 then resets the statute or resets the guidelines as they would
24 apply without that finding.

25 THE COURT: Thank you, Mr. Gonzales. Let me just say

1 two things. First of all, Mr. Gonzales has referred a couple of
2 times to *Elder*, and Mr. Birdsall has referred to *Elder*. And
3 just for the purposes of the record, the case they are both
4 referring to is *United States v. Elder*, 900 F.3d 491, a decision
5 from August of last year by the Seventh Circuit that talked
6 about what constitutes a predicate felony offense for the
7 purpose of increasing the statutory mandatory minimum, which is
8 what we talked about with regard to the first issue. So I just
9 wanted to put that on the record.

10 The second thing that I'll say for the record, and
11 this also goes for Mr. Birdsall, obviously, with regard to my
12 earlier decision, because of the First Circuit decision in
13 *Davila-Felix*, I think that -- I don't believe that the Puerto
14 Rican statute can qualify -- The 2011 conviction in Puerto Rico
15 qualifies Mr. Pagan as a career offender under 4B1.1, and that
16 will be my finding. But what I was going to say is, obviously,
17 both of you given that I think I've kind of sprung things on
18 each of you, if after today you both go back to your offices and
19 you look at things and discover that I've said something you
20 think I've gotten incorrect or whatever, you have the ability,
21 of course, to ask me to reconsider, and I'll certainly consider
22 those requests.

23 So I am going to find that Mr. Pagan does not qualify
24 as a career offender, and that then takes us to the third issue
25 that Mr. Birdsall raised. It may be a non-issue and given the

1 mandatory minimum. But the third issue that he raised was the
2 question of the amount of drugs that I should use, and this
3 was -- doesn't involve parsing any statutes. Mr. Birdsall
4 simply argues that Mr. Duenas is not to be believed, and that I
5 expressed an opinion on March 6th when I issued the verdict at
6 the trial that Mr. Duenas had been less than truthful in some
7 ways. And Mr. Birdsall says that based on that, I should not
8 consider any amounts of drugs other than the 1.6 kilos, give or
9 take, that were in the package that was intercepted by the
10 postal service. And so I wanted to give you an opportunity to
11 respond to that, Mr. Gonzales.

12 MG. GONZALES: Well, Judge, based upon the Court's
13 first ruling, I think that that puts his advisory guidelines at
14 120 months under the mandatory minimum. Looking at the
15 arguments -- the Government's version, if the Court accepts it,
16 would place the defendant at a guideline of 97 to 121 months,
17 which is one month more at the high end than the mandatory
18 minimum.

19 If the Court accepts Mr. Birdsall's argument, that
20 puts him at 77 to 96 with a lower drug weight amount. But
21 because the mandatory minimum is the mandatory minimum, I'll
22 address the argument, but I think that ultimately it is -- The
23 outcome is controlled by the mandatory minimum application.

24 But looking at the argument, the Government's position
25 has been that Mr. Duenas was, though he had his moments, overall

1 was a reliable source in that he provided information to law
2 enforcement that lead to the identification of Mr. Medina. It
3 also confirmed what law enforcement had already known.

4 As the Court was aware, this case began when our --
5 began by the postal service who began looking at packages that
6 were being shipped based on information that they were receiving
7 from Puerto Rico that these drugs were coming into the United
8 States, and they were coming from potentially Mr. Medina. So
9 postal inspectors conduct their investigation. And as they
10 testified at trial, they -- they began monitoring an initial
11 package that came from Puerto Rico, similar size, similar weight
12 as the one that was ultimately delivered. They followed that
13 package to almost to completion of delivery of that package to
14 see who was going to show up, who was going to be involved in
15 taking receipt of that, which helped them identify Mr. Duenas as
16 somebody who was on the receiving end of that package.

17 On the front end of the investigation, there was the
18 attempted arrest of Mr. Medina Pagan in Puerto Rico. And when
19 law enforcement attempted to stop his vehicle, he got into
20 somewhat of a precarious chase on dangerous roads in Puerto Rico
21 ultimately abandoning his vehicle and running into the woods.
22 There were shots fired between the officers and Mr. Medina or
23 Mr. Pagan, which lead to a follow up of, as the Court was aware,
24 a search warrant that was done on Mr. Pagan's vehicle in which
25 law enforcement recovered, among other things, four receipts

1 that were taken from his vehicle that were sent over August 8th,
2 August 6th, August 20th and July 17th from Puerto Rico to
3 Wisconsin, in fact, Milwaukee, Wisconsin.

4 In one of those receipts, it actually had the name of
5 Rodolfo Duenas attached to it. So we have Mr. Duenas, who gives
6 and testified that there were multiple packages. We have -- but
7 we don't have to rely solely on his memory because we have the
8 postal inspector who did a control delivery of one package to
9 see if they can identify Mr. Duenas for hope of ultimately in
10 which they ultimately did get a search warrant for his residence
11 or identified the residence where the packages were going so
12 that on the day of the next package that came through, they
13 could execute a simultaneous search warrant with the delivery of
14 the package on the residence of Mr. Duenas, which they, in fact,
15 did. And then we have the information that there were four
16 postal receipts in the defendant's vehicle that was registered
17 to his wife, that the officers identified as him being involved
18 in the gun battle, and that these four packages preceded the
19 ultimate deliveries in this case by a few months and were
20 packages from Puerto Rico to Milwaukee consistent with what
21 Mr. Duenas said.

22 So based upon what Mr. Duenas said and what the postal
23 inspectors and the evidence at trial, I think that there is
24 evidence that this wasn't just a one-time occurrence, that there
25 were multiple occurrences. And that using the estimations of

1 the probation agent by making a conservative estimate of just a
2 half a kilogram each delivery, that it places Mr. Medina in that
3 three-and-a-half to five kilogram range. Even using even
4 smaller amounts, you still get to that basis because we have 1.6
5 to start off. We're trying to get -- We're trying to create two
6 more. And, in fact, we have, you know, five other deliveries of
7 packages that were sent.

8 So based upon the facts and the evidence in support of
9 what Mr. Pagan or what Mr. Duenas said, I think that there is a
10 basis to find that he was responsible for three-and-a-half to
11 five kilograms of cocaine in this case.

12 THE COURT: Thank you, Mr. Gonzales. Mr. Birdsall.

13 MR. BIRDSALL: Thank you, Judge. To say that
14 Mr. Duenas was a reliable source really stretches the definition
15 of using any words at all. I made the argument at a closing
16 before you rendered your verdict about this whole issue about
17 the search in Puerto Rico and the receipts in the car. And I
18 see now that the same attempts to use that and Mr. Duenas'
19 comments to make a finding that there's these multiple
20 deliveries. Well, I think that's wrong for two reasons. One,
21 as Mr. Duenas as we all were here when he was on the stand,
22 there might have been morsels of truth every once and a while,
23 every few minutes. But most of it was him just sort of making
24 stuff up as he went along, and that's number one. Number two is
25 we remember and this is the argument I was referring to that I

1 made at the closing.

2 When we look at the four receipts that are found at
3 this car, I specifically remembered and I forgot the gentleman's
4 name that was a witness about how he had secured the car and
5 everything was, you know, nobody touched it. And they went in
6 and executed the warrant the next day. If I recall, this was --
7 August 19th was the date. And in one of the receipts, and this
8 was Exhibit 20 of the trial -- from the trial exhibits, was that
9 exact date, except it is executed and created in Milwaukee that
10 day.

11 So, you know, to say that, you know, somebody's lying
12 here. And so I don't think even though and I realize I'm
13 climbing a steep hill since you've already made the finding at
14 the guilt/innocence level, but and you don't even have to make
15 that high of a finding with regards to -- with regards to drug
16 amounts. But when you made that finding at the verdict level,
17 you were -- you weren't looking just -- you were just looking at
18 guilt/innocence for the charge itself. What we're concerned
19 with now is more the relevant conduct, breath of the offense
20 sort of thing for purposes of finding the drug weights and
21 coming up with an accurate calculation.

22 And so whatever analysis you went through with regard
23 to connecting the receipts and I remember some of the rational
24 was, you know, there was multiple receipts and then of course we
25 have the fingerprints and all of that, but none of that

1 addresses these -- these other, I don't know what the term is to
2 use, but I guess ghost drugs that -- that Mr. Duenas testified
3 about. And we're now -- You're now being asked to use all of
4 these other dates with, you know, kind of unknown amounts
5 because none of it ever got seized or tested or anything. It's
6 all because Mr. Duenas says so.

7 And so it's one thing to find some sort of
8 corroboration for purposes of guilt or innocence with regard to
9 this offense, but it's quite another, I think, to find it with
10 regards to these other unknown dates and amounts and whatever
11 that Mr. Duenas has generated here. And frankly, you know, this
12 has been a long-standing complaint that I and many others have
13 had with regards to how things are done in the federal courts in
14 terms of finding drug weights. So but I think we're -- I think
15 I'm in a good place to ask you not to do that given who
16 Mr. Duenas is and who we all saw testify. So those are my only
17 comments, Judge.

18 THE COURT: Thank you, Mr. Birdsall. It is true as
19 Mr. Birdsall indicated that on the day that I issued my verdict,
20 I agreed with Mr. Birdsall and actually went back and pulled up
21 the recording of -- My staff pulled up the recording of that
22 hearing. And Mr. Birdsall pointed out several places where
23 Mr. Duenas was arguably less than truthful or certainly
24 inconsistent. And he's right that I said that Mr. Birdsall had
25 and I quote, something of tenuous relationship with the truth,

1 unquote. One of the bases that I used for saying that was that
2 he went into some detail, Mr. Duenas did, to testify that he had
3 a policy that you don't ever lie to the police. Because if you
4 lie to the police, they figure it out and they catch and you get
5 in lots of trouble and it's real bad thing and he would never do
6 that. And then at some point, I can't remember if it was before
7 or after that, someone asked him a question, and he said, well,
8 no I didn't tell the truth, I always lie to the police. So we
9 had that moment, which was funny in a sad way. Perhaps a bigger
10 issue that I had, and I mention this, also was Mr. Duenas'
11 testimony was very confusing. Mr. Duenas, clearly, knew a whole
12 lot of players who were involved in whatever drug trade he was
13 involved in in Milwaukee, and I think I actually said and I went
14 back and checked the hearing. Mr. Duenas was trying to explain
15 who was who and there were no fewer than three different people
16 who he said were named Ricky, but I couldn't figure out which
17 Ricky was who and who sold what to whom, so it was confusing.

18 But by the same token, I also said when I gave that
19 ruling the fact that he is not believable in all respects does
20 not mean that he is entirely incredible, and some portions of
21 testimony -- his testimony were corroborated by other evidence
22 in this case, and that brings us to Mr. Birdsall's argument.

23 So I -- The Government doesn't have to prove the drug
24 weight beyond a reasonable doubt, and I know Mr. Birdsall's not
25 -- doesn't think that's a great thing and maybe a lot of people

1 don't think that's a great thing, but that is the status of the
2 law as we sit here right now.

3 The Government has to prove by a preponderance of the
4 evidence the amount of drugs. What do we know for sure? We
5 know for sure there was 1.6 kilos that was intercepted. That
6 tells us some other things. At least it tells me, I think, that
7 it's unlikely that that was the first shipment that made it from
8 Puerto Rico to here because it's not an insignificant amount to
9 start off with. We know that there were some receipts in that
10 car.

11 Now, Mr. Birdsall, you've argued that one of them may
12 very well have been manufactured by somebody, may have been
13 misdated, I don't know. But that still leaves three other
14 receipts. It is notable to me that Mr. Duenas did not Orlando
15 sent me, you know, 25 different shipments or 500 shipments. He
16 said five to seven. The probation department took a
17 conservative cut at that, and Ms. Mahmoudi used five. And he
18 said five to seven and anywhere from 500 grams up to a
19 kilo-and-a-half. And the probation department elected
20 conservatively to use a half a kilo. Even if we discard two of
21 those, and we say only the three that there were receipts --
22 predated receipts in that car in Puerto Rico, even that at a
23 conservative estimate would give us a kilo-and-a-half plus the
24 1.6 that we know was intercepted.

25 Mr. Duenas, if you'll recall, also went into some

1 detail about the instructions that he had gotten about how to
2 handle the money, turning around going back. And some of the
3 testimony that I found credible was the fact that he was very
4 specific in how he was to handle the money, and that that
5 happened more than once. So, perhaps, three-and-a-half to five
6 kilos may be high. But even if we -- If we drop down to the
7 next level and we look at the two to three-and-a-half kilos,
8 which seems to me imminently reasonable given that we already
9 have 1.6, and I simply find it hard to credit that this is the
10 only time that this occurred given the amount that was shipped
11 and the evidence that we saw. That puts us, as Mr. Gonzales
12 indicated, at 78 to 97 months, and that is below the mandatory
13 minimum of 120 months, which I have no choice but to go under.

14 So I do think that Mr. Duenas was credible on -- on
15 some things. I think it is credible to believe that there was
16 more weight than simply this 1.6 that was intercepted. I will,
17 I guess, adopt Mr. Birdsall's argument to the extent that I'll
18 find that the applicable amount is two to three-and-a-half
19 kilos, which puts us at level 26. Mr. Duenas'(sic) criminal
20 History Category is three because he's not a career offender and
21 level 26. And Category 3 puts us at a sentencing guideline
22 range of 78 to 97 months. But as Mr. Gonzales indicated, that's
23 below the mandatory minimum, so that will be my finding as to
24 drug amounts.

25 And so I think basically where we are is that we have

1 a sentencing guideline range with a high end of 97 months, a
2 mandatory minimum of 120 months. And the real question that
3 that then leaves for us in terms of at least for me in terms of
4 sentencing is whether I should go above the 120 months. I know
5 Mr. Birdsall's going to say, no, I should not, but I will give
6 him an opportunity to tell me why. But first, I'm going to
7 start with Mr. Gonzales and ask for his view and what the
8 appropriate sentence should be and why. Mr. Gonzales.

9 MG. GONZALES: Judge, the Government does believe that
10 the Court should go above the 120 months, and we do so based
11 upon a number of factors.

12 First and foremost, I know that the Court has to look
13 at and apply the law as applies to these prior convictions. But
14 as I indicated earlier, when Congress passed the recidivism
15 statutes and when they tried to address this problem, they are
16 looking at those people who continue to violate the controlled
17 substance laws of the state and federal governments.

18 And when one looks at Mr. Medina Pagan's record, it's
19 clear that he continues to be involved in controlled substance
20 violations. When one looks at his prior criminal history, it is
21 basically a controlled substance violation after controlled
22 substance violation. There's, you know, whether they qualify or
23 whether they fall under the requirements for the increase in --
24 in the criminal history or the mandatory minimum, the fact
25 remains that Mr. Medina has continued to involve himself in

1 violations of the Controlled Substance Act. So I would say the
2 bulk of all of his criminal contacts and convictions have to do
3 with violations of the Controlled Substance Act.

4 So we've got a multiple repeat offender. Within this
5 one investigation and this trial, there were multiple
6 involvements by Mr. Medina in distributing or selling controlled
7 substances. We also have what I deem as extremely troubling the
8 testimony of the officer in Puerto Rico who said he tried to
9 pull over Mr. Medina's car or a car that was registered to his
10 wife; that Mr. Medina basically tried to shoot him, fired
11 multiple rounds out of his vehicle as they came into contact;
12 that he called for back up; that Mr. Medina was seen grabbing a
13 bag and running from the vehicle; and that the officer didn't
14 pursue Mr. Medina into the jungle or into the woods because he
15 feared for his own safety based on the interaction with
16 Mr. Medina when he tried to do the traffic stop. There was
17 basically a gun battle.

18 And so based upon, you know, this long criminal
19 history, a criminal history that is littered with controlled
20 substance violations and based upon the criminal conduct of, you
21 know, limited contact that we had with him in this investigation
22 as far as, you know, he's sending these packages so we're not
23 dealing with him on a day-to-day basis. But when we ultimately
24 try to place him under arrest and take him into custody, this is
25 what we get. We get somebody firing a firearm at law

1 enforcement officers.

2 So based upon those factors, the Government believes
3 that the Court should go beyond the mandatory minimum in this
4 case of 120 months. We're above and beyond the guidelines now
5 so that as to what amount the Court should go over, I'm not
6 sure. But I think that this is not -- In a typical repeat
7 offender, 120 months would be appropriate. But in Mr. Medina's
8 case, we have these multiple violations, but we also have this
9 conduct where they try to take him into custody, that he gets
10 involved in this shoot out. So based upon that, the Government
11 believes that the Court should sentence Mr. Medina to a term of
12 imprisonment greater than 120 months.

13 THE COURT: Thank you, Mr. Gonzales. Mr. Birdsall.

14 MR. BIRDSALL: Okay. This comes in several layers, I
15 guess. First of all, the mandatory minimums that have been
16 established, obviously, this Court is bound by them, but they
17 are ridiculous. And so if the decision is do I go above them,
18 they're already a ridiculously high number that's been
19 arbitrarily established by Congress. The whole idea of the
20 mandatory minimums were to be super tough, super severe. Well,
21 they are. Those are one of the reasons why we have the highest
22 rate of incarceration in the world in this country.

23 So -- So that's just sort of an offset. You'd have to
24 -- You'd have to come up with, you know, some really, like, I
25 don't even know what kind of facts to justify going above

1 something that's already been established as a very, very severe
2 sentence, and that's number one.

3 Number two is that if we look at the mandatory
4 minimums that are set and what his guidelines now are after the
5 Court's rulings, I don't know that there is a credible argument.
6 If this Court has to start with the guidelines as a base level,
7 right? That's -- That's the standard operating procedure.

8 THE COURT: No, no. I have to consider them. I don't
9 have to start with them as a base and go up. I'm surprised to
10 hear you argue that, Mr. Birdsall.

11 MR. BIRDSALL: True. I wasn't -- That wasn't my
12 point. That is -- It is something that has to be considered.
13 Well, if we consider it, it's substantially lower than the 120
14 months, substantially. I mean when I did the math off the top
15 of my head, you know, I guess 40 months lower. So -- So just as
16 a matter of just, you know, legal standards, mandatory minimum
17 and the -- the applicable guideline range is being considerably
18 lower, it seems kind of an easy conclusion just to go right to
19 the mandatory minimums.

20 This -- The whole threat of having the mandatory
21 minimums doubled, as has happened here, was always present for
22 Mr. Medina's and my discussions pretrial. And one of the -- One
23 of the things that he expressed to me, but certainly also to the
24 Court in many filings, much to my chagrin, was that he felt that
25 he was being targeted by some of these police down in Puerto

1 Rico. Well, I didn't know what to make out of that at first,
2 I'll be honest, but I have an obligation to explore anything
3 that could arguably be helping my client or, you know, in any
4 form or fashion so I explored it, as this Court knows.

5 And it was very difficult because of the language
6 barrier and the distance. But what we discovered was that he
7 was right about a lot of that. And so I'm not trying to say
8 it's okay to not stop for the police and shoot at them. What
9 I'm saying is that, you know, that I understand that courts may
10 view people who go to trial or don't accept responsibility as
11 maybe deserving more -- some sort of additional punishment for
12 that or maybe it's the reverse. You get the benefit of the
13 acceptance, but he had -- He had legitimate gripes that he
14 uncovered. And I advanced some of them to the Court, and maybe
15 I didn't -- wasn't able to connect all the dots just because of
16 the limited resources that we had to do it, but it was -- It was
17 clear to me. We had one officer who actually testified here who
18 was associated with this group of officers that got convicted of
19 stealing some evidence, and I don't remember all the details,
20 but it is all part of the record.

21 In addition, there was a situation where Mr. Medina
22 was -- had drugs planted on him, and it turned -- It was
23 revealed through the course of a trial. He was acquitted. The
24 officers were -- There was a lot of bad blood let's put it that
25 way between Mr. Medina and the police down in his home town. In

1 fact, he's had three separate acquittals because of corrupt
2 police practices. So when he uses those terms, you know, if I
3 hadn't done the investigation, I would have just thought that
4 maybe he was, you know, doing some excess complaining. But
5 that's one of the reasons that, you know, he felt like he was,
6 you know, there was some -- I'm not going to use the term
7 conspiracy because I can't show that but, you know, that -- that
8 because of all that bad history that he has with the police down
9 there, that there was something more afoot here than just
10 Mr. Duenas.

11 So I guess that takes me to the discussion that we
12 would have about me and my client before trial because, you
13 know, it doesn't mean that there's a possibility that the five
14 years that he was facing could be ten, and he chose to go
15 forward. So -- So the original offense, five years, if he had
16 accepted some sort of a negotiated settlement, the guidelines
17 approximately 77 plus months, and the now applicable mandatory
18 minimums after -- after his unsuccessful trial. I think it's
19 kind of -- I think that a penalty like that encompasses a lot of
20 conduct, and it's more than sufficient to address anything --
21 any kind of concerns the Court could possibly have.

22 Obviously, if it wasn't applied, I would be asking for
23 something along the low end of the guidelines or lower. So I
24 know a lot of times in sentencings people, defendants, you know,
25 sometimes their histories are bad and some judges are, you know,

1 kind of looking at that more heavily than maybe their personal
2 side. But I've always been of the belief, you know, there's --
3 people do -- if you get convicted of crimes, they commit crimes,
4 but that doesn't mean that somehow they're inherently a
5 throwaway person, and that we need to see them be gone for these
6 incredible amounts of time.

7 And that's the case with Mr. Medina. He's got his two
8 absolutely two lovely children. Karina and Ashley are here
9 today as is his ex, their mother, Lisa Rivera. He's done good
10 in this world with them. I just met them today, but and -- and
11 so, you know, I describe his family life in our Sentencing Memo.
12 I guess what I'm saying, Judge, is that, all right, there's
13 certain, you know, prescribed things in the law that we have to
14 deal with, but it's already going to have a huge impact not only
15 on his life, obviously for him doing the time, but on the lives
16 of his children and his loved ones. So I'm asking respectfully
17 in all the arguments that we've already hashed out and reserved
18 to do -- to impose simply the mandatory minimums.

19 THE COURT: Thank you, Mr. Birdsall. I do have one
20 question about a comment or a statement that you made. You
21 indicated that Mr. Pagan has three acquittals. The Presentence
22 Report does not reflect that. It reflects the one in 2009.

23 MR. BIRDSALL: These were in Puerto Rico.

24 THE COURT: I know that.

25 MR. BIRDSALL: And so I was going off of -- I'm basing

1 this off of the research we did.

2 THE COURT: The Presentence Report reflects a number
3 of cases that were brought against Mr. Pagan in Puerto Rico.
4 There were some that were dismissed for various reasons, I don't
5 know what, but only one reflects an acquittal, and that is one
6 for some weapons charges in 2009.

7 MR. BIRDSALL: So when I made that reference, it was
8 just based on discussions I had earlier with my assistant here.
9 And I see two cases, acquittals. You're right, there was two
10 others that were dismissed. The case numbers I have for
11 acquittals are 2009s, CLA2009G148, 149. That appears to be one
12 case, those two numbers, 148, 149. And then the same numbers,
13 except 146 and 147, also appears to be a separate case, also.
14 Perhaps I misspoke when I said three. It looks like from our
15 orders, at least, because we wouldn't have gotten all the --
16 obtained all the original documents, so that's the information
17 that I had.

18 THE COURT: The probation department has one of these.
19 It has the 146. But it reflects that 148 and 149 is a
20 dismissal, not an acquittal, which as you know could be for a
21 variety of reasons and not necessarily a not guilty finding.
22 All right. Thank you, Mr. Birdsall. Okay. Mr. Pagan, it is
23 your turn. And all I would ask is that Mr. Birdsall move the
24 microphone over whether it's going to be Ms. Wirth or Mr. Pagan,
25 whoever is going to be speaking, that they have access to the

1 mic.

2 INTERPRETER: I am a little bit nervous. I'm a little
3 bit scarry. I'm scared that what I'm about to say may affect my
4 sentence. I don't know a lot of English, but I wrote this down.
5 I practiced it, and I would like to try to talk to you in
6 English.

7 THE COURT: Okay. Thank you, Ms. Wirth.

8 DEFENDANT: Good afternoon. Good afternoon, Your
9 Honor. And good afternoon to everybody in this courtroom. God
10 bless everyone and everyone's family.

11 First of all, I want to thank -- I want to thank you
12 for giving me this opportunity to express myself to you, and I
13 want to thank Mr. James Birdsall, my lawyer, for the great job
14 that he did through my whole case and also at trial. I love to
15 have him and continue to be my lawyer in my appeal motion. I
16 want to thank Alexandra, the interpreter, for the magnificent
17 and great job that she did in the translation of the key witness
18 statement. She did it in Spanish and English and, Your Honor,
19 that was a lot of work what she did, and she did a great, great
20 job. She got to be one of the best in the country with all the
21 respect that all the translation that translated because all of
22 them are really good and professional.

23 Your Honor, I don't want nobody in this court and this
24 courtroom to feel offended by the words that I'm going to say.
25 I'm just trying to defend myself if applied to me in this case.

1 And please excuse my English because I don't know how to express
2 it well. I don't want to sound disrespectful. That's the last
3 thing I want this Court to think about me. I've been practicing
4 what I'm about to say in this court for months and months,
5 waiting for the perfect moment, so I can express myself to you,
6 Your Honor. Thank you for giving me this opportunity, and I
7 hope that the U.S. Attorney don't take advantage of my little
8 English because it's not that good, and I don't got the right
9 understanding. I want to ask my lawyer to correct me if I say
10 something backwards or misunderstanding.

11 Your Honor -- Your Honor, the persecution and
12 harassment against me from the Puerto Rico police start in 2006
13 when some detective fabricated a case. They planted drugs and
14 guns inside my mother's house and arrested me, which my lawyer
15 proved beyond a single doubt to the honorable judge in Arecibo,
16 Puerto Rico that those officer lie and perjury. The honorable
17 judge with a lot of knowledge about the law dismissed the case
18 and all those accusations that those officer make against me.

19 After the honorable judge find me innocent, my lawyer
20 recommend and ask me to go ahead to the police station in
21 Arecibo, and we make a complaints against the drug dealing from
22 Arecibo, Puerto Rico for corruption, for planting the drugs and
23 guns inside my mother's house and arrest me. That complaint
24 that we make went to the Internal Affair's Office in San Juan,
25 Puerto Rico. And because of my complaint and all the people's

1 complaint, the federal authority initiate an investigation
2 against those detectives from that police station in Arecibo,
3 Puerto Rico.

4 When the federal authority finally got the search
5 warrant, they raided that police station. The federal authority
6 find multiple guns and drugs hiding in different places inside
7 that police station that those officers use to fabricate cases
8 to people, most likely planting that drugs and guns in people's
9 property like houses and cars and illegally arrested those
10 people, and I was one of those people that they arrested in
11 2006. The federal authority from Puerto Rico did a great job.
12 They dismantle and eliminate a danger criminal or gun section of
13 corrupt police officer that operate in Arecibo, Puerto Rico. I
14 don't got the evidence with me to prove that, but everything is
15 in record in Puerto Rico court, also in the Internal Affairs
16 Office in San Juan, Puerto Rico.

17 Thanks to the federal authority, there were a lot of
18 proof and evidence. They indicted and arrested multiple police
19 officers from Arecibo, Puerto Rico for corruption. That City of
20 Arecibo had to close that police station down.

21 Your Honor, when several corrupt detective find out
22 that I was the one that made the complaint against that police
23 station, I became the enemy and the target. And all the corrupt
24 officer that don't got indicted and arrested for that corruption
25 went after me and fabricate me another case in 2008, which my

1 lawyer, Cesar Saraso, proved beyond a reasonable doubt that this
2 officer lie and perjury. And one of those officer was present
3 that day that I got arrested for this case in Puerto Rico. When
4 the honorable judge (indiscernible) from Arecibo, Puerto Rico in
5 my bench trial, her intelligence and knowledge about the law,
6 she clearly see all the lies and perjury that those officers and
7 witnesses intentional committed in her court. And being
8 impartial and professional, she dismissed that case and all the
9 accusations that those officers make against me.

10 When I live (indiscernible), one of the detective from
11 Milwaukee, Wisconsin testified under oath in this court in trial
12 that they was in charge of this case and investigation are the
13 Puerto Rico police. My lawyer, Jim Birdsall, mention it in
14 trial that this case was an ambush against me.

15 Your Honor, the Puerto Rico police had a lot to do in
16 this case. Most likely, they are retaliating against me because
17 the FBI or the federal authority arrested and indicted multiple
18 police officer in Puerto Rico. Your Honor, the federal
19 authority dismantle and eliminate criminal or gun section of
20 corrupt police officer that operate in Arecibo, Puerto Rico, and
21 it's still a lot more to do.

22 Juan Maldanado, he used to work in that police
23 station, and he was also on the investigation. They low his
24 rank down from a detective to a regular police officer when the
25 City of Arecibo closed that police station down for corruption.

1 They move Juan Maldonado to Barceloneta, Puerto Rico where he
2 work as a police officer and became friends with Jesus
3 Rivera-Uverga and Oscar Colon Cuevas, which they both work at
4 municipal police station in Barceloneta, Puerto Rico. And most
5 likely, they are corrupt police officer, and both of those two
6 detective are involve in this case.

7 That police station in Barceloneta, Puerto Rico where
8 the Officer Jose Rivera-Uverga and Oscar Colon Cueva work or
9 used to work, that police station was also on the investigation
10 for corruption. Oscar Colon Cuevas and his partner are the one
11 accusing me of multiple crime, including this case.

12 Those officer are accusing me with false allegation
13 that I shoot at them, that I shoot at them with a gun, lying
14 under oath when they was the one that shot the car allegedly I
15 was driving. The bullet impact that car several time. They
16 shot to kill. Those officer should get a lying detection test
17 so you can see, Your Honor, how liar and corrupt those officer
18 are. And the same police station, one officer shot himself and
19 accuse somebody else saying that that person shot him. That's
20 how corrupt and danger this officer are.

21 You can see in my PSI report that I was never charged
22 or accused of any crime in Puerto Rico court because when they
23 said that those allegation happen, most likely those officer was
24 being investigate for being part for a gun section of corrupt
25 police officer that operate in Barceloneta, Puerto Rico.

1 A lot -- A lot of police officer are angry at me
2 because of my complaint. A lot of police officer got indicted
3 and arrested for corruption in Puerto Rico. Those officer from
4 Barceloneta, Puerto Rico. Also, those officer from Barceloneta,
5 Puerto Rico also got arrested for stealing property and money.
6 They was also stealing everything from the police station
7 evidentiary room where they work as police officer, and they was
8 also involve in a lot of criminal activity. Those officer got
9 arrested for that corruption, including Oscar Colon Cuevas and
10 several other police officer from that police station in
11 Barceloneta, Puerto Rico where those officer, they came from
12 Puerto Rico to Milwaukee, Wisconsin and testify against me and
13 this court and trial. That's why I was never charged or accused
14 of any crime in Puerto Rico.

15 They Government and authority in Puerto Rico know
16 about that corruption. And by the law, the state and federal
17 court in Puerto Rico don't allow evidence or cases that
18 corruption police officer are involved because such evidence is
19 tainted with corruption. Most likely sooner or later, the
20 federal authority are going to close that police station in
21 Barceloneta, Puerto Rick where like they did in Arecibo, Puerto
22 Rico.

23 I don't -- I don't understand how the U.S. Attorney
24 Mario Gonzales has said the evidence and present part of the
25 evidence to you and this Court in trial acknowledging that

1 corruption. Because my lawyer mentioned that. My lawyer
2 mention about that corruption several times in my case in this
3 court and also send him the news article from their arrests. I
4 don't have the knowledge if Mario, the U.S. Attorney, brought
5 that situation to you attention and tell you about that
6 corruption. Most likely, he's trying to cover up, justify the
7 corrupt police officer action and the criminal activity that
8 those officer committed in that police station in Barceloneta,
9 Puerto Rico.

10 And, Your Honor, my lawyer prove beyond reasonable
11 doubt that those officer lie to you under oath in this court in
12 trial about the evidence and everything that was used against me
13 in my trial. Those officer show no respect to you or to the
14 United States Federal Court. Those officer and Oscar Colon
15 Cuevas, the corrupt officer, they was together that day when
16 they confiscate the car, allegedly find the evidence.

17 When the U.S. Attorney Mario Gonzales find out about
18 the arrest and corruption that Oscar Colon Cuevas was involved,
19 Mario took that corrupt officer out of the case and act like he
20 was never there. He knew -- He knew that you, Your Honor, are
21 not going to allow or accept any evidence that corrupt police
22 officer are involved. Then, the U.S. Attorney use Oscar Colon
23 Cuevas' partner for testimony against me in my trial. I don't
24 know if that is even legal that one of those officer are accused
25 of corruption also arrested and convicted. And both of those

1 two officer was together in that incident, and they both had
2 access to the evidence and, Your Honor, one of those officer --

3 They, clearly, intentionally and purposefully lied to
4 you and commit perjury, which my lawyer instantly proved that
5 beyond reasonable doubt. They lie under oath about the many
6 receipt for evidence, which that evidence was never presented to
7 this Court when my lawyer asked for that evidence. That was a
8 lie that that evidence was stolen from his personal car.

9 Your Honor, I respect your decision of believing those
10 officer because you might think that they are some honorable
11 officers, but they are not. Your Honor, with the power that you
12 got and influence in the federal environment, that with one call
13 that you make, you can easily verify or find out about the
14 arrest, corruption that took place in that police station in
15 Barceloneta, Puerto Rico and for what those officers were
16 accused and arrested.

17 Your Honor, can you, please, take a couple minutes and
18 log in in internet. Oscar Colon Cuevas, corrupt police officer
19 from Barceloneta, Puerto Rico, so you can see or read about the
20 Indictment, arrest and corruption. It's possible that you got
21 some honorable friends sitting on the bench in Puerto Rico
22 court. Before you sentence me please can you search for the
23 truth and please can you have somebody make a call so you can
24 find out about Oscar Colon Cuevas and who he is.

25 Abner Valcarcel testify under oath in this court in

1 trial that he was in charge of this case and investigation
2 aren't the Puerto Rico police, that he was just assisting them.
3 Most likely, he lied under oath is a possibility, and Abner
4 Valcarcel and Evelyn Lazo are the ones in charge of this case
5 and investigation. Both the Puerto Rico police also play a good
6 role in this case. I never had an opportunity to see the
7 statement that those officer presented to the grand jury to have
8 me indicted so we can find out who they tell the grand jury was
9 in charge of this case and investigation. Abner Valcarcel and
10 Evelyn Lazo also acknowledge that the full statement from
11 Rodolfo Duenas, the key witness. I ask my lawyer why he don't
12 call Evelyn Lazo to testify under oath. You also can clearly
13 see in my discovery that Rodolfo give the detective a false
14 statement against me.

15 Rodolfo say that I give Ricardo Rivera some cocaine
16 and money for him; that Ricardo took the drug and money and give
17 it to him, to Rodolfo, that I send him that drug and money. My
18 lawyer -- My lawyer prove beyond reasonable doubt that that was
19 a false allegation against me and Ricardo because Ricardo was
20 already incarcerated in jail when Rodolfo say that that drug
21 deal or transaction happened.

22 My lawyer also prove beyond reasonable doubt that
23 Rodolfo isn't a reliable witness. He, Rodolfo, even admit that
24 on occasion he lied to authority when he's in trouble to get out
25 of trouble, and he did it once again in this case, lying to the

1 detective so they can drop his charges, which they did. And he
2 got away, once again, saying that that drug was mine, saying
3 that that drug was mine when it was not mine. The detective,
4 Valcarcel, and Evelyn Lazo knowledge that that was a false
5 allegation from Rodolfo Duenas.

6 My discovery, clearly, show that when those detective
7 check the name of Ricardo Rivera in the computer to find out who
8 he was, pop out that Ricardo was already incarcerated in jail
9 when the key witness say that that drug deal or transaction
10 happened. And the officer, Abner Valcarcel and Evelyn Lazo,
11 still used the false testimony against me to have me indicted
12 acknowledging that was a false allegation or statement. Those
13 detective presented a false statement like it was true knowing
14 that that was a lie. You can, clearly, see the evidence of that
15 false statement being used against me in my discovery on
16 Page 000316. And not only that, you were, those detective also
17 did an illegal photo lineup showing Rodolfo only two photos,
18 Ricardo Rivera photo or pictures and somebody else picture or
19 photo.

20 They are, most likely, by the law when they do a photo
21 lineup, they supposed to use, at least, from four to six photos,
22 if I'm not mistaken. And being only two photos or pictures,
23 Rodolfo still picked the one person.

24 Now discovery, clearly, show Abner Valcarcel and
25 Evelyn Lazo coaching and coercing Rodolfo to pick Ricardo's

1 picture or photo basically telling Rodolfo that picture that you
2 pick is not Ricardo. It's not Ricardo's picture or photo. That
3 other one, that's Ricardo.

4 Even Alexandra, the interpreter, say how they can do
5 that, wow. Even Alexandra can tell you about the lies, perjury
6 and corruption going on in this case. Your Honor, that's not
7 right. I'm not -- I'm not sure, but I believe that that is
8 illegal and corrupt. That is, most likely, obstruction of
9 justice. You can also find the evidence in my discovery or in
10 the transcripts from Alexandra on Page 8010056 and also on
11 Page 8010057 and also on Page 0000. Those officer break the law
12 in so many ways. It is incredible how they got away with that.
13 They are abusing the power and authority that the Government are
14 giving them. Those officer knew that Rodolfo was lying since
15 day one. I hope that one day all this corruption come to light,
16 and somebody put a stop to that corruption in the City of
17 Milwaukee, Wisconsin.

18 And, Your Honor, those officer from Puerto Rico and
19 Puerto Rico court, they had no credibility, which a lot of the
20 evidence are in Puerto Rico court. The honorable judge in
21 Puerto Rico don't allow any of the court corruption or anything
22 illegal or anyone doing from any detective, district or U.S.
23 Attorney or anybody else. That's why in 2006 and also in 2008,
24 the honorable judge dismiss both of those two cases in Puerto
25 Rico.

1 As you can see in the PSI report, the honorable judge
2 find me innocent because those officer and witnesses lie in that
3 court. Most likely, that's why those officer came from Puerto
4 Rico to your court thinking that you were never was going to
5 find out about that corruption that took place in that police
6 station in Barceloneta, Puerto Rico because that corruption
7 happened in Puerto Rico.

8 The U.S. Attorney never did the effort to investigate
9 about that situation and tell you about that corruption or the
10 involvement of Oscar Colon Cuevas in this case just to have me
11 indicted and convicted. My lawyer bring that issue to this
12 Court, and he did a great job to find out about all this
13 corruption and illegal activity that those officer committed in
14 this case. He also find out about the fingerprint analyst being
15 fired from his job as a fingerprint analyst, most likely, for
16 something suspicious or illegal as his job as a fingerprint
17 analyst.

18 As the tainted and corrupt evidence was, most likely,
19 passed around after or before he got fired to another
20 fingerprint analyst from the same agency to one of his co-worker
21 or friend, and his corrupt evidence was used against me in my
22 trial. It's possible that with the power that you got, Your
23 Honor, you can easily verify or find out about the fingerprint
24 analyst and for what he was being investigate and fired.

25 Please, Your Honor, can you ask the U.S. Attorney that

1 don't lie to you and tell you the truth if something strange and
2 suspicious that the U.S. Attorney Mario Gonzales do not want to
3 send an (indiscernible) where they say they had my alleged
4 fingerprint analyzed from a different agency where they accuse
5 my alleged fingerprint got damaged, so they can use the photo
6 fingerprints that the fingerprint analyst that got fired too
7 and, most likely, analyzed that photo and use it against me in
8 my trial.

9 The U.S. Attorney, most likely, know that that
10 fingerprints is not mine. There's something fishy and corrupt
11 in that fingerprints. If the internal affair are really to
12 investigate this case, they are going to be surprised of all the
13 corruption that are going on in this case. Please, Your Honor,
14 can you have the internal affair investigate this case. I know
15 and I believe that you got more power than the U.S. Attorney in
16 this court.

17 Please, Your Honor, can you analyze everything that I
18 say because it's true, and it's a lot of fact that prove that in
19 this case. I believe, I trust and I got faith that you can make
20 that happen. And can you, please, ask the U.S. Attorney, Mario
21 Gonzales, to tell you the truth about the fingerprint analyst
22 and also about the corrupt police officer from Puerto Rico
23 because he knows the truth.

24 Your Honor, it's a lot of corruption, lies and perjury
25 that these officer and witnesses committed in this case. I am

1 afraid of those detective and the U.S. Attorney. I fear for my
2 life, freedom and safety because I'm leaving and also know what
3 those officer are capable to do. They got the power -- Excuse
4 me. They got the power, intelligence and connection to make up
5 evidence and false statement to easily convince any judge or
6 jury to find an innocent person guilty like the way they do in
7 this case with me and who know to how many other innocent
8 people. That's why I decide to have a bench jury instead of
9 jury trial because you, Your Honor, have more intelligence and
10 integrity and knowledge about the law than those 12 people from
11 jury with all the respect that the jury deserve. I really was
12 hoping that you will see all this corruption, lies and perjury
13 that those officers and witnesses committed in this case and
14 also in this court.

15 This case is based on false allegation from witnesses,
16 detective and even the U.S. Attorney. If they see that I'm
17 innocent, most likely they turn their heads around and act like
18 they don't see nothing. They are not going to turn against each
19 other for a guy like me from Puerto Rico with a criminal record.
20 Your Honor, it's hard for us to prove our innocence. Sometime
21 or most of the time, we don't get the opportunity to get a bail
22 bond if we don't got nothing to offer or cooperate with the
23 district attorney -- I mean with the U.S. Attorney. When we
24 incarcerated in jail, it's impossible for us to collect evidence
25 so we can prove our innocence and have a fair trial.

1 Your Honor, the U.S. Attorney and those detectives and
2 witnesses lies and perjury are more credible and convicting
3 (indiscernible). I pray to God that one day all this racism,
4 discrimination and hate against minority, Latinos and black is
5 stopped in the United States of America even if everyday seem
6 like it is far and far away.

7 I also pray to God that in my appeal motion somebody
8 see all this corruption, lies and perjury that they committed in
9 this case, and I hope if you can, Your Honor, or somebody else
10 please ask the internal affair to investigate this case. They
11 are going to find out about the corruption from the Puerto Rico
12 police, the lies and perjury from the detectives under oath,
13 plus the detective coaching and coercing witnesses, the lies and
14 perjury from the key witness and many other issues like the
15 corruption, fingerprint analysis, the false statement or
16 evidence presented to the grand jury and to you, Your Honor, and
17 et cetera.

18 Please can you take in consideration that I'm innocent
19 and please can you take in consideration the new law with the
20 Democrats and Republicans and also the President passed, and
21 please can you go below my mandatory minimum for being not a
22 violent crime. And I'm sorry. I know that I'm asking for too
23 much. Your Honor, I'm really, really scared, and my life is in
24 your hand. And please can you take out if you can the 851
25 enhancement that the U.S. Attorney put against me in retaliation

1 because I decide to go to trial. I don't take that plea and
2 decide my right to go to trial and don't take that plea, if it's
3 possible and if you got the power to do so.

4 And please don't let the U.S. Attorney send me to
5 prison for more time. I've been incarcerated inside of Kenosha
6 County Jail cell for four years for a crime that I don't commit.
7 Being locked up inside a county jail is really, really hard
8 time, especially when you innocent. Your Honor, I got four
9 beautiful daughters, which I'm proud of them because one is
10 almost finished college, and the other one is about to start
11 college, and I really want to get out of jail so I can keep
12 helping them.

13 If you can bless me with the opportunity -- If you can
14 bless me with that opportunity, I pray to my Lord and Savior
15 Jesus Christ, and I got faith that he's going to touch your
16 heart this afternoon. Honorable Judge Pepper, I also want to
17 say that I don't understand how those detectives and witnesses
18 break the law so easily when the lawyer with a lot and work and
19 effort, that I'm sure you know because you was a great lawyer
20 before, is sad how my lawyer, clearly, prove beyond reasonable
21 doubt that these detectives and witnesses lied to you and lie in
22 this court under oath committing perjury, which in the United
23 States Federal Court by the law is illegal and penalized as a
24 crime. I don't know, and I don't have the knowledge if that law
25 is only used against the defendant and not used against the

1 accusers or if the United States Federal Law is for everyone
2 equally.

3 I also don't know if those detectives and the U.S.
4 Attorney are really are above the law. Your Honor, in my case
5 and part of the evidence that they say they had or find, one of
6 the officer involved at that time was later investigated by
7 federal authority for corruption that lead to his arrest, accuse
8 and convicted of a crime for illegal activity in his job as a
9 police officer, and another one was fired for doing illegal
10 activities also. And from the fingerprints to the men in
11 receipt all the evidence was used against me in my trial. I
12 just like to know if the detectives and witnesses are going to
13 be charged or accused for lying under oath in this federal court
14 with perjury or if those detective with criminal intentions,
15 acknowledging that there is a crime had the authority to break
16 the law and lie in the federal court.

17 If nobody do anything about that, they going to
18 continue breaking the law. Most likely, they not have to be
19 doing this for years and years and getting away with that
20 disrespecting the federal court. I believe, Your Honor, that
21 you deserve a lot -- a lot more respect than that. The U.S.
22 Attorney believe otherwise because, most likely, he knew that
23 they was lying and, most likely, he allowed them to lie and
24 perjury in this federal court.

25 I also want to tell you that I'm sorry. I apologize

1 if I didn't respect you somehow with the letters that I wrote
2 you or anything I did not say, and I want to say -- and I also
3 want to say that I'm really, really hurt honestly. I was
4 expecting a totally different outcome considering the facts that
5 I've been incarcerated for over four years and might have to go
6 through more incarceration for drug I had no dealing with.

7 Your Honor, if I was guilty, I could have accepted the
8 plea agreement and the five-year mandatory minimum that was
9 offered to me two years ago. And with the programs and the good
10 time that the BOP have to offer, I would have been home to my
11 family already. But because of my innocence, I decide to fight
12 for my life. My mother is sick currently living in Puerto Rico
13 suffering due to the tragedy that the hurricane cause, and I got
14 four beautiful daughters and my (indiscernible) are affecting
15 them.

16 Overall, Your Honor, I'm here asking for leniency
17 hoping that you take this all in consideration and consider time
18 served for me and help me get back to my family. And please,
19 Your Honor, don't punish me with extra time like the U.S.
20 Attorney want to do. He's being vindictive towards me trying to
21 force me to take a plea, trading me with an 851 enhancement for
22 the reason that I decide to exercise my right to go to trial.
23 You can, clearly, see that the U.S. Attorney through the 851
24 enhancement option a few months before my trial, almost all four
25 years that I've been incarcerated.

1 And, Your Honor, those detectives, Abner Valcarcel and
2 Evelyn Lazo, and those detectives from Puerto Rico are capable
3 to do and they did a lot of illegal stuff to have me convicted,
4 from coaching and coercing witnesses to lie under oath in a
5 federal court. They should be investigate by the federal
6 authority or the internal affair for corruption for fabricating
7 cases, planting evidence and making false statement in people's
8 cases like mine.

9 Your Honor, they planted -- They planted and, most
10 likely, presented a false fingerprint and a false statement from
11 the key witness to the grand jury to have me indicted. Those
12 detectives and, most likely, the U.S. Attorney Mario Gonzales,
13 they should be investigate by the federal agency internal affair
14 for conspiracy for conspire to commit perjury in this federal
15 court. The internal affair or any other federal agency can find
16 all the evidence that they need against those detective crystal
17 clear in my discovery and also in the transcript.

18 This is one -- In one of the letters that I wrote you,
19 I asked for an evidentiary hearing to suppress the evidence so
20 we can show you all this corruption and illegal issues that are
21 going on in this case before trial.

22 THE COURT: Mr. Pagan, I'm sorry to interrupt you.
23 I'm just wondering, I don't want to cut you off, but there may
24 be some people who need a bathroom break because we've been here
25 quite a while. And so I just wanted to check to see if anyone

1 needed to take a break before Mr. Pagan continues. Anybody need
2 a minute?

3 MG. GONZALES: It depends on how much longer we're
4 going to go, so maybe now would be a time to take a break, if
5 that's acceptable.

6 THE COURT: I will take a break long enough for people
7 to use the facilities and then just come back when you're
8 finished, and I'll let you continue, Mr. Pagan.

9 (Brief recess taken.)

10 (Back on the record.)

11 THE COURT: All right. So everybody had a brief
12 break, and we're all back in the courtroom now. Mr. Gonzales
13 and Mr. Birdsall are here. I'm sorry to have interrupted you,
14 Mr. Pagan. Go ahead.

15 MR. BIRDSALL: One brief housekeeping thing, Judge.
16 First of all, he's almost done. I discussed that with him just
17 as we took this break. But I also have a call I was supposed to
18 get on at 4:00, and I'm just wondering -- I'm going to just --
19 I'm not trying to say we should hurry this, not at all, but I
20 just want to know, approximately, if he's just about done, what
21 time we might be done so I can let that other court know?

22 THE COURT: I have no earthly idea. Mr. Gonzales may
23 want to give a response to what he's just heard. It wouldn't
24 surprise me if he did. I don't know if you're going to have any
25 input, and I may have a couple of comments. So I wish I could

1 predict that to you, Mr. Birdsall, but I didn't anticipate we
2 would still be having this discussion at this point either. So
3 I don't mean to tie you up with our other obligations. I've
4 been there, done that.

5 MR. BIRDSALL: I will have it covered, no problem.

6 THE COURT: Thank you.

7 DEFENDANT: Your Honor, I just want to say I'm sorry.
8 I'm kind of scared and nervous, and I just want to let you know
9 what's happened between the situation because you're here this
10 side of the law. The story is a lot of facts that prove what
11 I'm saying. A lot of facts here and in Puerto Rico about the
12 corrupt police officer, about the fabricating of my cases, the
13 planting the evidence, the complaint I made to the internal
14 affair. They raided the police station finding guns and drugs
15 hiding in different places. A lot of police officer got
16 indicted and arrested and these come from the beginning because
17 this officer is mad at me because of what I did. I already
18 spoke about that. I'm about to finish. Can I finish?

19 THE COURT: I told you, Mr. Pagan, you could have as
20 much time as you wanted.

21 DEFENDANT: This is why in one of the letters that I
22 wrote you I asked for evidentiary hearing to suppress the
23 evidence so we can show you all these corruption and illegal
24 issues that are going on in this case before trial. I also
25 asked my lawyer numerous and numerous of times that I want to

1 have evidentiary hearing to suppress the evidence and was
2 denied.

3 I also feel that it's not fair to me that the
4 mandatory minimum now that the U.S. Attorney want to give me ten
5 years in prison over the time and penalty just because I decide
6 to exercise my right to go to trial.

7 Your Honor, I did it because I'm innocent, plus I want
8 you to see all this corruption and how those detectives and
9 witnesses intentionally and purposely lie and perjury under oath
10 in a federal court just to have somebody convicted.

11 I was not trying to hurt anybody to deserve all that
12 time that the U.S. Attorney is asking for. Please, Your Honor,
13 can you take a consideration the five-year mandatory minimum
14 that was offered to me before trial, and please can you give me
15 time served and help me get back to my family. My mother is
16 over 70 years old. She got high blood pressure and diabetes,
17 and I was the one who take her to the hospital to get her
18 medication.

19 When the hurricane passed in Puerto Rico, the lights
20 went off in her house for months and months. She trip and fall
21 and had an injury that give her from seven to eight stitches in
22 her forehead. And not long ago she also had a little stroke.
23 And I got an 8 year-old daughter, and she got the condition of
24 Autism, and it's heartbreaking for me every time she tell me
25 daddy, when you coming home.

1 Your Honor, I'm not a violent person. Please give me
2 -- Please can you give me the opportunity to start a new life
3 and Jesus Christ with my family. God bless you and God bless
4 everyone and everyone family in this courtroom in the name of my
5 Lord and Savior, Jesus Christ. I pray to him this morning to
6 touch you heart for you to believe what's fair in my sentencing.
7 And if you are not a believer in Jesus Christ, please, Your
8 Honor, don't take this as an offense. Thank you. God bless you
9 and God bless your family, and thank you for giving me this
10 opportunity to express myself for the truth. Thank you.

11 THE COURT: Thank you, Mr. Pagan. Mr. Gonzales, a
12 number of the things that Mr. Pagan has addressed from a legal
13 standpoint I assume you know how I might respond to those, but
14 he has made certain factual allegations that while he's hinted
15 at them over the course of time that he's been in custody, this
16 is the first time that he has flushed them out. And you don't
17 have to respond, but I'm happy to give you an opportunity if
18 there's anything that you'd like to comment on.

19 MG. GONZALES: Well, I guess just so the record is
20 clear, he touched upon a number of things. He talked a little
21 bit about racism and the impact that might have played. I just
22 want the record to reflect, I know it doesn't reflect it, but
23 I'm a dark-skinned Hispanic. I'm -- My life has been touched by
24 racism just like most people who are of my skin color, so that
25 is a non-starter.

1 As far as the allegations of corruption and regarding
2 the agents or individuals from Puerto Rico. When this case
3 began, I was not contacted by the local police department in
4 Puerto Rico. I was contacted by federal agencies as part of a
5 much larger federal investigation. In fact, that investigation
6 is ongoing, and it continues. And I do note that the Government
7 did continue to monitor some of Mr. Pagan's phone calls. And
8 shortly after the trial, his -- Mr. Pagan indicates that, you
9 know, there was this -- that there wasn't that Abner Valcarcel
10 lied and they talked about this ongoing federal investigation.
11 Well, he called home. And during that call home in April of
12 last year, he basically told people, Ericka Cordero, that she
13 should be on the lookout because the feds are conducting a much
14 larger investigation and referenced what was going on in -- in
15 court.

16 So for him to say that Abner Valcarcel lied about the
17 ongoing federal investigation or the federal authorities were in
18 charge of the investigation, that is, in fact, true. And not
19 only is it true, he found it truthful enough that he contacted
20 folks in Puerto Rico to let them know that there is this ongoing
21 federal investigation.

22 As far as the issue of corruption, I think it came out
23 during the trial that the officer that testified -- None of the
24 officers that testified that were on the Government's list were
25 officers connected in any way to -- The only evidence of

1 corruption I found was that there was an allegation that some
2 officers and support staff had taken some items. Regardless of
3 whether they were abandoned or in the property room being that
4 they took advantage of and used in another capacity.

5 And so -- But one of the officers that did testify in
6 this case I think testified that he was one of the officers
7 that, in fact, identified those individuals, the fellow officers
8 that were involved in that investigation. So as far as
9 corruption goes, we did a thorough investigation.

10 I contacted Puerto Rican authorities. Agent Lazo
11 contacted Puerto Rican authorities, and we saw no evidence of
12 any corruption as it touched upon Mr. Mr. Pagan's case --
13 Medina's case. So even beyond that corruption angle, the
14 evidence in this case was developed. And the reason we
15 prosecuted this case here was because the evidence was here.
16 And that evidence consists of Mr. Duenas, and it also consisted
17 of the investigation of the postal service.

18 The postal authorities were contacted by federal
19 agents in Puerto Rico, and that's how I got involved in it. The
20 postal service conducted this investigation. They did the
21 observation of Mr. Duenas. They let the one package go through.
22 They kind of figure out, okay, there is corroboration of what's
23 going on and what we've been told. We'll just wait for the next
24 package.

25 That next package that came through, that was the

1 package with the 1.6 kilograms of cocaine that was sent from
2 Puerto Rico that postal inspectors, not HIDTA, not anyone else.
3 The postal inspector who testified in court testified that he --
4 They delivered that package. They executed the search warrant
5 simultaneously with the delivery of that package with
6 Mr. Duenas, and then the postal service took that package and
7 forwarded it off to -- for analysis. It was done by the Postal
8 Inspection Service. And as the Court may remember, the package
9 was sent off. They found -- They took fingerprints and
10 photographs of those latent prints. And what happens in this
11 process is, they submit those photographs for an analysis into
12 the AFIS machine. A computer views the -- what fingerprints
13 were recovered were sent and identifies the possible suspect.
14 It's only when Mr. Medina's fingerprints were identified by the
15 computer that they were handed off to another agent or to a lab
16 analyst. And I was in consultation with that lab analyst
17 because we thought this case was going to go to trial a little
18 bit earlier, and I was in consultation with that lab analyst,
19 and we were preparing for his eventual testimony. And he was
20 never fired for any wrongdoing. He wasn't fired at all. I had
21 confirmation not only with him but with the supervisor to
22 confirm that he was leaving for a better paying job in another
23 agency. He was highly qualified. He had a long and
24 distinguished academic career.

25 So the case was then handed off to the woman who came

1 in and testified before this Court. And she is the classic rags
2 to riches kind of great American story. She's a woman who
3 started in the postal service and worked in the laboratory, has
4 a little bit over a high school degree and began an
5 apprenticeship program and worked in that agency and continually
6 stayed in that agency for some 30 years to be a lab analyst and
7 testified in this court as to all the schooling and the training
8 that she was given. And she had no reason to fabricate any
9 evidence. She had no relationship to the previous analyst, and
10 she conducted her own analysis before coming to court. And that
11 caused a little bit of concern in that she turned over some
12 documents a little later than what they would normally be done,
13 and her independent analysis identified the defendant's
14 fingerprints.

15 So it wasn't -- We weren't relying on officers in
16 Puerto Rico or anyone else to place the defendant's involvement
17 in this case. We looked up the physical evidence as it directly
18 tied to the defendant. So really, the fingerprints in
19 conjunction with what Mr. Duenas was telling us, and he was
20 arrested. He gave a statement. He identified the source before
21 any fingerprints were analyzed. Things were sent off to the lab
22 after he had given his information, and the Postal Inspection
23 Service did their own investigation, and that's the name the
24 computer came up with first so that the two analysts could
25 compare.

1 So as far as the evidence is concerned, it had very
2 little to do with Puerto Rico, and the Government did do a
3 background check. We didn't present any evidence that had any
4 involvement, and again this case was part of a much larger
5 federal investigation, and that investigation is still ongoing
6 as best I know, and it has -- and it wasn't run by the local
7 police department.

8 So based upon that information, I believe that -- I
9 just -- A lot of what Mr. Medina had to say was simply
10 accusations towards the detectives, myself, the lab analyst,
11 everyone involved in this case. But when one looks at the
12 evidence in this case, the judge in this building who often said
13 the best way to tell how someone's going to act in the future is
14 how they've acted in past. And when you look at Mr. Medina's
15 record, I think it speaks volumes unless the officer who he sold
16 controlled substances back in '95 was part of corruption or
17 targeting him, whether it was the officers that arrested him for
18 possession of marijuana on multiple occasions, possession of
19 cocaine, possession with intent to distribute cocaine back in
20 2002. And then the multiple arrests that he's had since then.
21 So when one looks at the prior history and the facts of this
22 case, I think it's pretty clear that Mr. Medina has no one to
23 blame but for himself for continuing to be involved in the sale
24 and distribution of controlled substances. That's it, Your
25 Honor.

1 THE COURT: Thank you, Mr. Gonzales. Mr. Birdsall,
2 anything before I speak?

3 MR. BIRDSALL: Just briefly. I didn't expect to retry
4 the case today, but a few items. Mr. Gonzales says this case
5 had very little to do with Puerto Rico, but he just got done
6 asking you to impose a sentence higher than the mandatory
7 minimums based I think exclusively on a discussion about the
8 whole traffic stop escape thing in Puerto Rico. So I think it
9 has a lot to do with Puerto Rico.

10 And just very briefly on a couple of items that jumped
11 out as I was listening to this. There was definitely some
12 murkiness going on with the police officers from Puerto Rico.
13 And they were very cagy, as you may recall, about who was
14 handling this investigation. And it really wasn't us, it was
15 people in Milwaukee. The people in Milwaukee is like, no, it's
16 the guys down in Puerto Rico that are handling it. And then
17 none of them, including Mr. Duenas, had anything to say about
18 the fact that he was out of custody and they would not talk
19 about his deal and he didn't have apparently, which just, you
20 know, strained any sort of credibility as far as I was
21 concerned.

22 So there was just -- I only mention that because there
23 was some talk in the parties here about the credibility of his
24 officers. But there was a comment about the computers and the
25 prints. Well, as I recall, the computer spit out 20 names, and

1 they only focused on his.

2 And finally, the lab analyst, there was just an
3 assertion that he just moved because he got a better job at a
4 different agency, but I distinctly remember and I'm sure this is
5 a matter of it's on the transcript somewhere. But there was
6 without question in my mind that I'm remembering this correctly,
7 that there was an assertion that this gentleman was disciplined,
8 and that's why he wasn't available, disciplined in some form or
9 fashion. We never found out why, but that happened. And so
10 maybe that was an incorrect assertion back then, I don't know,
11 but I know that that happened. So those are the only comments
12 that I have, Judge.

13 THE COURT: It is not usual, it's not common, but it's
14 not usual for people to do what Mr. Pagan did in this case and
15 that's to decide that they want to exercise their constitutional
16 right to go to trial instead of plead guilty. There is
17 absolutely nothing wrong with that. Every single defendant who
18 is charged with a crime has a right to a trial if they want one.
19 They are entitled to under the Constitution, and I hope that I
20 don't ever punish anybody for making that choice.

21 I'd like to think I haven't. I had several defendants
22 whom I've sentenced, and they come in and the Government asks me
23 for a particular sentence after a trial and the defense asks for
24 a particular sentence. And other than the fact that someone
25 doesn't get a reduction for acceptance of responsibility under

1 the guidelines, I try not to treat anybody differently if they
2 were convicted after a trial than if they were convicted as a
3 result of a plea. So I am -- Whatever sentence I'm about to
4 impose, I'm not going to impose a sentence to punish Mr. Pagan
5 for going to trial. That is absolutely his right.

6 But I have to tell you I know Mr. Pagan that you've
7 been wanting to tell me a lot of that stuff for a long time.
8 And I promised you that I would give you the chance to do it,
9 and I just did. But you started out your comments by saying you
10 hope that -- You're scared and you're nervous, and you hope that
11 nothing you say will offend anybody. I'm curious as to how you
12 hope that some of the things you said wouldn't offend anybody?

13 For starters, you accuse an Assistant United States
14 Attorney of lying, of making up evidence against you, of
15 intentionally presenting perjured evidence. Mr. Gonzales and
16 every other federal prosecutor, including me when I was a
17 federal prosecutor, has to take an oath to uphold the
18 Constitution and the laws of the United States. It is a
19 prosecutor's job, despite what some not so good prosecutors
20 think. A prosecutor's job is not to put people in prison. A
21 prosecutor's job is not to get people convicted no matter what.
22 A prosecutor's job is to try to do justice, and I will tell you
23 that I have known both Mr. Gonzales and Mr. Birdsall for more
24 years than I would like to count. And I have never known
25 Mr. Gonzales to do anything other than to try to do justice. He

1 has come into this court before, and he has asked me to give a
2 lower sentence than he needs to. He's come into this court
3 before, and he's told me that he thinks a charge maybe should be
4 dropped, like the evidence looked like it proved the charge but
5 then it turned out it didn't.

6 You come in here and you accuse the prosecutor of
7 committing crimes and violating the law. That's offensive. And
8 I realize that you said you hoped you didn't offend anybody, but
9 that is offensive. You also came in and you started your
10 remarks by telling me what a wonderful job Mr. Birdsall did, and
11 I agree with you. Mr. Birdsall has worked himself silly on this
12 case. But today is the first day I've heard you acknowledge
13 that. For as long as I've known you, you've been writing me
14 letters telling me that Mr. Birdsall is not coming to see you,
15 Mr. Birdsall is not filing the motions that you ask him to file,
16 Mr. Birdsall is not making the arguments that you ask him to
17 make.

18 Yes, you wrote to me and you told me you wanted an
19 evidentiary hearing. I am guessing you also told Mr. Birdsall
20 that, and I don't know what the two of you talked about, and
21 it's none of my business. I don't have any right to know.
22 That's between you and Mr. Birdsall. But I would be willing to
23 bet that Mr. Birdsall gave you some advice about whether or not
24 legally a Motion to Suppress the Evidence would have any
25 likelihood of success. And I'm willing to guess that the reason

1 that I never saw a motion like that was because Mr. Birdsall in
2 his professional opinion, did not think that it would help you,
3 and maybe he even thought it would hurt you.

4 I didn't deny you an evidentiary hearing, Mr. Pagan.
5 If Mr. Birdsall had asked for one, Mr. Gonzales might have
6 opposed it, but I would have made that decision at that point in
7 time. We've had an attorney advising you for a long time on
8 this case, and you've tried to go around him, and you've tried
9 to in some cases work against him. I suspect that
10 Mr. Birdsall's heart sank any number of times when I wrote him a
11 letter and said your client is writing directly to me again, and
12 he's not allowed to do that. And I was upset about that not
13 because you were bugging me. It's my job to read people's
14 letters and do whatever, but because you were hurting yourself.
15 You've said a number of things here today that -- that simply
16 are not accurate. Your first -- Again, Mr. Gonzales made
17 mention of it. You commented about racism. Yeah, there's
18 racism in the United States. You bet there is, and I'm guessing
19 it exists in Puerto Rico. It exists in Milwaukee, and it exists
20 everywhere else. But have you looked over at who the prosecutor
21 is? Have you heard his name? I'm not saying that people of
22 brown skin can't be prejudiced against other people of brown
23 skin. But, you know, to say that Mario Gonzales prosecuted you
24 because your name is Alejandro Pagan and because you're from
25 Puerto Rico? I -- That makes very little sense to me.

1 You -- You made the comment that you don't know
2 whether anybody looked into this corruption that you've talked
3 about. Well as a matter of fact, one of the reasons that this
4 case has taken so long to get to trial and taken so long to get
5 to sentencing is that Mr. Birdsall asked me to delay the case
6 numerous times so he could look into the allegations that you
7 have made. Mr. Birdsall did, in fact, look into them.
8 Mr. Gonzales looked in them because I ordered him to. He would
9 have done it anyway even if I hadn't ordered him to, but I
10 ordered him to. And you know what? He did come back and
11 Mr. Birdsall came back with information and a newspaper article
12 about two officers in I think it was Arecibo. I don't think it
13 was Barceloneta. And Mr. Gonzales kind of talked about it, had
14 been taking things it looked like either the evidence inventory,
15 and they had been prosecuted, and they had been convicted. So I
16 went through the reports of the officers who were present the
17 day you were arrested. And I compared the names of the two
18 officers who had been charged with the names of the officers who
19 were present at your arrest, and they weren't the same officers.
20 No, they were not the same officers because I looked. I can
21 only a imagine -- I think you shouldn't talk anymore, Mr. Pagan.
22 I think it probably won't help things, and I'm just being
23 straight with you.

24 Perhaps, you're absolutely right that there's rampant
25 corruption in the Arecibo Police Department, and maybe there was

1 even a police department that was shut down. It seems to me,
2 though, that if you're asking me to go on the internet and do a
3 search and find information about that, Mr. Birdsall could have
4 done the same thing. And he could have come in, and he could
5 have presented that evidence to me, or he could have handed it
6 to Mr. Gonzales, and you could have said, boy, look at this.
7 Look at what happened here. Look at the names of these officers
8 who were charged and convicted.

9 You asked me several times to look into things, to
10 investigate things. My role as a Judge, and I'm not saying this
11 as a cop out or a way to escape responsibility, but I'm not the
12 person who investigates things. The prosecutor investigates on
13 behalf of the Government to make sure before he brings the
14 charges that he has enough evidence. The defense attorney
15 investigates on behalf of you. That's what his job is, and
16 Mr. Birdsall did that. My job is to take the evidence that the
17 Government presents to me and the evidence that Mr. Birdsall
18 presents to me and then make a decision. I did that. I sat
19 there, and I listened to the evidence. Mr. Birdsall cross
20 examined every single witness. Mr. Birdsall tried to point out
21 places where he believed that people were not being truthful,
22 and I listened to all of that, and then I made a decision. And
23 you indicated that you're sad about that decision, that you had
24 hoped it would go a different way. I guess I can understand
25 that.

1 But I based my decision on the evidence that was in
2 front of me. You've said to me today that you decided to have a
3 trial in front of me instead of a trial in front of a jury
4 because you thought that I was smarter and you thought I knew
5 more about the law, and you said that you thought I deserve a
6 great deal of respect. Those words don't mean much to you
7 because you've not shown much respect for my intelligence today.
8 You seem to think that if you say flattering things to me and
9 you say nice things to me that I'll ignore the law, that I'll
10 ignore the evidence that was in front of me, that I'll change my
11 decision that I issued after the trial, that I'll take your word
12 for all these things that happened even though you've told me
13 several times you've got evidence of all these things. I
14 haven't seen it. If there's evidence of all these things, why
15 didn't you give it to Mr. Birdsall? Why didn't Mr. Birdsall
16 give it to me? All throughout your comments, you kept referring
17 to your discovery. And you said if you look at Page 1801 of my
18 discovery, you'll see this. Well, I don't have your discovery.
19 The Government gives the discovery to Mr. Birdsall, and you and
20 Mr. Birdsall look at the discovery. And if there's something in
21 there I need to see, Mr. Birdsall points it out to me.

22 I don't have any of that. So if I needed to see that,
23 it should have been presented to me. I don't even have it now
24 to look at, and that is the way our system works. The
25 Government turns over all sorts of things to the defense in the

1 discovery, and half of it the defense says, you know what, this
2 doesn't have to do with my client, this doesn't have to do with
3 my case, and they pick out the things that are important that
4 the judge needs to see or that the jury needs to see. I don't
5 do that. The prosecutors and the defense do that, and I have
6 not seen any evidence to support any of the things that you're
7 talking about here.

8 The fingerprint analysis, and again I've already made
9 my determination, but I think I, at least, ought to make the
10 point. You know, you may recall that we finished your trial and
11 on the last day of trial I did not issue my verdict on the last
12 day of trial. There's a reason for that. Mr. Birdsall asked me
13 if he could submit the fingerprint evidence to an independent
14 fingerprint consultant, not the Government fingerprint
15 consultant, but an independent consultant. And rather than
16 finish the trial and say, no Mr. Birdsall, we're done, we've
17 been working on this case for years, we are done. I said, yes,
18 Mr. Birdsall, I'll let you do that. And so we came back a
19 month-and-a-half later, I think, for me to issue the verdict.
20 By the way, the independent fingerprint examiner did not find
21 that they were not your fingerprints.

22 You said that you wanted me to please consider going
23 below the mandatory minimum of ten years. And you mention the
24 law that the President recently signed in December.
25 Unfortunately, I cannot go under the mandatory minimum under

1 that law. That law doesn't apply to you. That law applies only
2 to defendants who have been convicted of crack cocaine, cocaine
3 base offenses. Your offense involved powder cocaine. So that
4 law doesn't allow me to go under the mandatory minimum. There
5 is no law that allows me to go under the mandatory minimum,
6 except if a defendant cooperates and provides substantial
7 assistance to the Government. You've not done that. That was
8 your choice. You have absolutely every right to make that
9 choice. But because you made that choice, I do not have the
10 legal authority to go under the mandatory minimum of ten years.

11 You asked me to give you the opportunity to do a
12 time-served sentence. Again, I don't have the authority to do
13 that. You told me that you've been praying and that you've
14 asked God to touch my heart, and I appreciate that. But what
15 that implies is that if I feel sorry for you or if I feel
16 sympathy for you, that I'll ignore the law, and I'll issue a
17 sentence that I don't have the authority to issue.

18 I believe it's important for judges to be
19 compassionate. I believe it's important for judges to feel
20 empathy. And I know you've suffered while you've been in
21 custody. You've told me. You've been telling me for years. I
22 found out from the Presentence Report that you have a family,
23 two daughters in Puerto Rico, two daughters here. I have no
24 reason to think that they aren't wonderful. I'm heart broken to
25 hear what your mother went through in Puerto Rico. I know so

1 many people who suffered after Maria, and it sounds like your
2 mother was one of them, and I'm sorry to hear that. I am.

3 But no matter how compassionate or empathic I can be,
4 I have to follow the law. That is my job. And in this case,
5 the law says that the mandatory minimum sentence that I can
6 possibly impose is 120 months, is ten years with credit for the
7 time that you've been in.

8 Mr. Gonzales has asked me to go above that, and he
9 makes some very good points. Mr. Pagan, this is your seventh,
10 as I count them, drug convictions. And a number of those were
11 here in Milwaukee, which you've talked a lot today about alleged
12 corruption in Puerto Rico in your home town in Arecibo. And I
13 don't -- I have no idea if that's happening or not. You know
14 and I've been to Puerto Rico, it's been to walk around old San
15 Juan, so I don't know. But in Milwaukee, you've got convictions
16 dating back to when you were a teenager. And not only do many
17 of them involve drugs, but many of them involve resisting
18 officers. There's been some talked, too, about the allegations
19 that when you were arrested in Puerto Rico on this offense that
20 you fled and that you fired shots at the officers. And you've
21 said no, it wasn't me. I didn't fire shots at them. They fired
22 shots at me. I don't know. I wasn't there. I don't have any
23 right to say. But what I do know is that you've resisted
24 officers in the past. And there was one particular conviction
25 and I think it was in the 2002 drug conviction where there was

1 an officer who was injured in the process of arresting you on
2 that offense and had to go to the hospital.

3 That is not to say -- I'm not accusing you of being a
4 violent person, but I am saying that there's an extensive
5 history that occurred before you ever went back to Puerto Rico.
6 This offense by itself if all I look at is shipping a
7 kilo-and-a-half of cocaine to Milwaukee or maybe two,
8 two-and-a-half, I don't know how much it was. That's not the
9 most serious drug crime I've ever seen. But you have an
10 extensive history both here in Wisconsin and in the
11 Commonwealth. You've got an extensive series of arrests in the
12 Commonwealth. Some of them didn't result in convictions. Maybe
13 that's because you were innocent. Maybe that's because of
14 technicalities, I don't know. But there are a number of police
15 contacts there.

16 And a lot of what you've said today, blaming the
17 prosecutor, blaming the officers, not today but over the past
18 blaming your lawyer, blaming everybody else for how you got
19 here, it doesn't show somebody who takes responsibility for his
20 part in getting himself here. I've had people go to trial
21 before as I told you in the beginning. And when they get
22 convicted, they come in here -- and I've had people at
23 sentencing who have said, Judge, look I went to trial because I
24 was facing a lot of time, but I'm sorry for what happened.

25 Now, I realize you're telling me you didn't do this,

1 so I guess you can't say that you're sorry for what happened.
2 But it's one thing to say, Judge, I can't admit that I did it
3 because that wouldn't be true. And it's another thing to turn
4 around and blame everybody around, except you. Blaming a
5 fingerprint examiner who has no reason to have anything to hold
6 against you. Blaming the postal inspectors who have no reason
7 to have anything to hold against you. Maybe the police officers
8 in Puerto Rico had a reason to be upset with you because you
9 reported their conduct. Why would the postal inspectors want to
10 get you in trouble? Why would the fingerprint examiners want to
11 get you in trouble? Why would the local officers here in
12 Milwaukee? Why would the HIDTA officers want to get you in
13 trouble? What's in it for them? What's in it for Mr. Gonzales?
14 He gets paid his salary whether he prosecutes you or somebody
15 else. If he didn't have your case, he'd have 50 others.

16 I believe that an appropriate sentence under these
17 circumstances, I can't go below ten years. I'm taking into
18 account, Mr. Pagan, your history, taking into account the fact
19 that there are some positives. You've got a family who cares
20 about you. But I also am taking into account the fact that your
21 reaction to this case has not just been to deny your guilt, but
22 to blame everybody else. I think the appropriate sentence is
23 138 months in custody followed by -- I believe the maximum,
24 Ms. Morgan you can correct me if I'm wrong, is five years of
25 supervised release?

1 PROBATION AGENT: Yes, Judge.

2 THE COURT: Thank you. I'm required to impose a \$100
3 special assessment. Under the law, I don't have an option
4 there. I'm not going to impose a fine. I think the Presentence
5 Report indicated that Mr. Pagan does not have sufficient funds
6 to be able to pay a fine, so I'm not going to impose that.
7 Mr. Birdsall, did you have an opportunity to review the proposed
8 conditions of supervised release, which are at the back of
9 Presentence Report?

10 MR. BIRDSALL: Yes, I'll confess I didn't give them a
11 super close look. Is there something in particular you wanted
12 to --

13 THE COURT: What I will do is I'll give you until --
14 how about a week from today to let me know if there are any of
15 those conditions to which you object. I reviewed them. I don't
16 see any it seems to me to raise any issues, but I'll give you
17 until the end of the day this coming Monday to let me know if
18 you object to any of them, if Mr. Pagan objects to any of them.
19 If you do, let me know, and I'll consider whether or not to
20 impose any conditions to which you object.

21 MR. BIRDSALL: Okay.

22 THE COURT: Mr. Gonzales, am I recalling correctly,
23 there were no other counts to dismiss; is that right?

24 MG. GONZALES: That is correct, Judge.

25 THE COURT: Mr. Birdsall, do you have any questions

1 from me of any specific recommendations to put in the judgment?

2 MR. BIRDSALL: I can't think of anything right now.

3 THE COURT: Okay. Do you have your request in terms
4 of placement or treatment?

5 MR. BIRDSALL: Well, I'd like to have him be
6 considered for treatment. I think there's a 500 hour program.

7 THE COURT: RDAP.

8 MR. BIRDSALL: And then to the extent that the Bureau
9 of Prisons will honor a request to be as close to his family
10 members as possible. I don't know if that would be here or some
11 place else as close to Milwaukee. So, why, either -- whichever
12 facility is closest to either here or Connecticut.

13 THE COURT: I think it is the District of Connecticut.
14 I'll put either Eastern District of Wisconsin or District of
15 Connecticut. Mr. Pagan, you do have the right, as you know
16 you've already mentioned it, to appeal both your conviction and
17 the sentence that I imposed today. I suspect I don't need to
18 tell you this because you already know that you're going to
19 appeal. But just so you're aware, Mr. Birdsall has to file your
20 notice of appeal within two weeks or 14 days of the date that I
21 issue the written judgment. I won't be able to do that today,
22 so it will probably be a couple days from now. But once that
23 written judgment comes out, Mr. Birdsall will file your notice
24 of appeal within 14 days. So I'm sure you've already talked
25 with him about it, but if there's any question that you have or

1 anything you want to talk to him about, make sure to do that
2 within those 14 days so that he has time to take the action that
3 you want him to take.

4 Mr. Gonzales, is there anything further that we need
5 to do today from the Government's perspective?

6 MG. GONZALES: No, Your Honor.

7 THE COURT: Ms. Morgan, anything from probation?

8 PROBATION AGENT: No, Your Honor.

9 THE COURT: Mr. Birdsall, anything else from the
10 defense?

11 MR. BIRDSALL: Nothing.

12 THE COURT: All right. Thank you everyone.

13 MR. BIRDSALL: Thank you.

14 (Whereupon proceeding was concluded.)
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C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified May 24, 2019.

/s/Susan Armbruster

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